

**STATE VOCATIONAL REHABILITATION SERVICES PROGRAM**

**SELF-ASSESSMENT AND TECHNICAL ASSISTANCE GUIDE**

**UNITED STATES DEPARTMENT OF EDUCATION**



**OFFICE OF SPECIAL EDUCATION AND  
REHABILITATIVE SERVICES**

**REHABILITATION SERVICES ADMINISTRATION**

**Fredric K. Schroeder, Ph.D., Commissioner**

UNITED STATES DEPARTMENT OF EDUCATION

*April, 1999*

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES  
REHABILITATION SERVICES ADMINISTRATION  
WASHINGTON, DC 20202

INFORMATION MEMORANDUM  
RSA-IM-99-20  
DATE: April 16, 1999

ADDRESSEES: STATE VOCATIONAL REHABILITATION AGENCIES (GENERAL)  
STATE VOCATIONAL REHABILITATION AGENCIES (BLIND)  
STATE REHABILITATION COUNCILS  
CLIENT ASSISTANCE PROGRAMS  
PROTECTION & ADVOCACY OF INDIVIDUAL RIGHTS PROGRAMS  
REGIONAL REHABILITATION CONTINUING EDUCATION  
PROGRAMS  
AMERICAN INDIAN VOCATIONAL REHABILITATION PROGRAMS  
RSA SENIOR MANAGEMENT TEAM

SUBJECT: FY 1999 Self-Assessment and Technical Assistance Guide

CONTENT: The purpose of this Information Memorandum (IM) is to transmit the FY 1999 Self-Assessment and Technical Assistance Guide to vocational rehabilitation (VR) professionals, advocates and other interested persons. The Guide has a twofold purpose: First, we are asking each State VR agency director to use this guidance as a self-assessment tool to determine the status of their implementation of the new requirements in title I of the Rehabilitation Act of 1973, as amended (the Act), and to examine issues related to the State VR agency's role as one of the partners in the statewide workforce investment system as described in the Workforce Investment Act (WIA). Second, RSA staff will review sections I-VI of the Guide with each State VR agency in order to provide necessary and appropriate technical assistance (TA).

Background

The Rehabilitation Act was signed into law on August 7, 1998, as part of the Workforce Investment Act of 1998, thus extending for five years the authorization of the Act. RSA has conducted orientation meetings on the Amendments, and also developed two IMs providing information and guidance to the State VR agencies on implementing the provisions of the Amendments. RSA-IM-98-20, dated August 17, 1998, and entitled "The Rehabilitation Act Amendments of 1998" provided an overview of the major changes in the Act, including a side-by-side comparison of the former and new statutory provisions related to the VR program. RSA-IM-

98-23, dated August 21, 1998, and entitled "Implementation of the Provisions of the Rehabilitation Act Amendments of 1998," instructed State VR agency management to move forward immediately in implementing the new major statutory provisions in their administration of the VR program and not to wait for the publication of the implementing regulations.

The Guide provides State VR agency management with an instrument with which to self-assess their progress in implementing the new requirements. (Please note that Section 1.4 of the Guide, entitled "Client Assistance Program Participation in the Workforce Investment System" is intended for use by Client Assistance Program staff.) While this method is significantly different from RSA's traditional monitoring approach, RSA continues to emphasize its role in providing leadership to the Public VR program and in providing TA to State VR agency management that results in streamlined service delivery and the achievement of quality employment outcomes for individuals with disabilities.

#### Regional Office Follow-Up Activities

Specific follow-up activities will be arranged between RSA Regional Office personnel and State VR agency management. Beginning in April, RSA staff will contact each State VR agency director in order to discuss their progress and to determine the need for further TA. RSA monitoring staff will be required to report to the Commissioner on the status of WIA implementation activities and on the new requirements for eligibility of Social Security beneficiaries. RSA will also review the following requirements with each State VR agency:

- Development of the Individualized Plan for Employment;
- Mediation and Due Process Procedures;
- Comprehensive System of Personnel Development; and
- Selected Fiscal Requirements.

Five additional modules containing new Federal requirements are also provided in the Guide to assist State VR agency management in assessing progress on these important requirements. These include:

- Designated State Agency and Designated State Unit Requirements;
- Composition and Functions of the State Rehabilitation Council;
- Information and Referral Services to Individuals Not Served by States on an Order of Selection;

Informed Choice; and

Service Record Documentation Requirements.

As reviews are conducted, RSA will maintain a list of TA resources which may be useful in improving State VR agency performance with regard to all of the new statutory requirements.

Additional copies of the Guide, or copies in alternate formats, may be obtained by contacting Mr. Charles Sadler. The Guide will also be available at RSA's Web Site located at:

<http://www.ed.gov/offices/OSERS/RSA/rsa.html>.

Mr. Sadler may be contacted at:

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If you have any questions or comments regarding the Guide, please contact Mr. Sadler.

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Fredric K. Schroeder, Ph.D.  
Commissioner

Enclosure

cc: CSAVR  
NAPAS  
NCIL  
NRFC

The Purposes of the Rehabilitation Act, as amended in 1998, are:

to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society, through--

statewide workforce investment systems implemented in accordance with title I of the Workforce Investment Act of 1998 that include, as integral components, comprehensive and coordinated state-of-the-art programs of vocational rehabilitation;

independent living centers and services;

research;

training;

demonstration projects; and

the guarantee of equal opportunity; and

to ensure that the Federal Government plays a leadership role in promoting the employment of individuals with disabilities, especially individuals with significant disabilities, and in assisting States and providers of services in fulfilling the aspirations of such individuals with disabilities for meaningful and gainful employment and independent living.

## **TABLE OF CONTENTS**

### **Page Numbers**

#### **INTRODUCTION**

1

#### **FY 1999 FOCUS AREAS**

- |    |  |    |
|----|--|----|
| 1. | COLLABORATION WITH OTHER AGENCIES,<br>PARTICULARLY WITH PARTNERS UNDER THE<br>WORKFORCE INVESTMENT ACT                               | 4  |
| 2. | DETERMINATION OF ELIGIBILITY,<br>PARTICULARLY THE PRESUMPTION OF<br>ELIGIBILITY OF INDIVIDUALS RECEIVING<br>SOCIAL SECURITY BENEFITS | 35 |
| 3. | DEVELOPMENT OF THE<br>INDIVIDUALIZED PLAN FOR EMPLOYMENT   | 45 |
| 4. | MEDIATION AND DUE PROCESS PROCEDURES   | 50 |
| 5. | COMPREHENSIVE SYSTEM OF<br>PERSONNEL DEVELOPMENT   | 60 |
| 6. | SELECTED FISCAL PROVISIONS   | 66 |

#### **OTHER TECHNICAL ASSISTANCE MODULES**

- |     |  |    |
|-----|--|----|
| 7.  | DESIGNATED STATE AGENCY AND<br>DESIGNATED STATE UNIT REQUIREMENTS                                    | 71 |
| 8.  | COMPOSITION AND FUNCTIONS OF<br>THE STATE REHABILITATION COUNCIL                                     | 80 |
| 9.  | INFORMATION AND REFERRAL SERVICES<br>TO INDIVIDUALS NOT SERVED BY STATES<br>ON AN ORDER OF SELECTION | 86 |
| 10. | INFORMED CHOICE  | 88 |
| 11. | RECORD OF SERVICES DOCUMENTATION<br>REQUIREMENTS   | 93 |

## INTRODUCTION

In fulfilling the purposes of the Rehabilitation Act of 1973, as amended in 1998 (the Act), the Rehabilitation Services Administration (RSA) is responsible for providing a leadership role in promoting the employment of persons with disabilities, especially individuals with significant disabilities, and in assisting the States in improving the achievement of employment outcomes. The Workforce Investment Act of 1998 (WIA) contains the Rehabilitation Act as Title IV, and includes a number of requirements for collaboration with other agencies, particularly partners involved in implementing the one-stop service delivery system.

The FY 1999 Self-Assessment and Technical Assistance Guide is primarily intended to provide guidance to the State vocational rehabilitation (VR) agencies funded under the Rehabilitation Act, as amended in 1998. It is also our intent to assist State VR agency management in implementing the new WIA requirements by using the Guide as a self-assessment instrument to determine the status of their implementation efforts, and to request additional technical assistance (TA) from RSA. We expect this process of self-evaluation to result in the identification and promotion of policies and practices that result in efficient and effective collaboration between the WIA partners, and that increases the participation of individuals with disabilities in meaningful employment outcomes.

Since the sixty-sixth Congress enacted the Smith-Fess Act on June 2, 1920, creating the State-Federal VR program, services provided to persons with physical and mental disabilities have been characterized by an individualized approach, tailored to the unique aspects of the persons seeking services. In addition, the VR program has always set as its primary goal, to assist individuals with disabilities to achieve meaningful and gainful employment. While the mission of RSA has changed over the years to accommodate the numerous other programs added to the Act, the singular program focus has been to empower individuals with disabilities to maximize their integration into American Society.

The Public VR program, in partnership with the other WIA partners, will continue to focus all available resources on improving the employment, retention and earnings of individuals with disabilities. The Congressional authors of the WIA indicated in conference notes the importance of synchronizing the VR program with the WIA partners in order to develop a cohesive job training system while being careful not to erode the VR program. It is important to note that the individual with a disability is the primary customer of the Public VR program, while the employer is the primary customer of the Workforce Investment System.

## **Impact of the National Performance Review**

RSA is carrying out the principles of the National Performance Review by developing a "customer-driven" monitoring system that focuses on results. RSA's primary "customers" are individuals with disabilities, especially individuals with significant disabilities. This year's Guide continues to emphasize the "customer driven" philosophy that focuses on the achievement of employment outcomes chosen by individuals with disabilities. Senate report 1579, which formed the basis for the 1998 Amendments, noted the intent that Title IV of the WIA promotes the creation of a consumer-oriented and consumer-driven VR system.

RSA continues to encourage the development and implementation of performance-based agreements between RSA and State VR agency management. The primary component of each agreement is how well the State VR agency performs in achieving its goal of providing services leading to meaningful and gainful employment. Equal to this measurement is the survey of customer satisfaction with the VR program. The involvement of the State Rehabilitation Councils as partners with RSA and the State VR agency in measuring State VR agency performance is critical to the development of a system for ensuring continuous improvement. While States are at different levels of achievement with regard to developing such systems, the impact of the National Performance Review, the continuing initiatives to "streamline" the State VR service delivery systems, and the performance standards contained in the Act, have all combined to create a need for continuous change and improvement in RSA's monitoring and TA efforts.

## **Future Plans**

RSA's monitoring and TA policies encourage the continuation of the strong State-Federal partnerships and cooperation that are unique to this program. Through cooperative State-Federal reviews, it is RSA's goal to facilitate the implementation of WIA in a manner that more efficiently and effectively achieves the primary purpose of the Public VR program, to empower persons with disabilities to achieve employment. Fundamental to this approach is the development of working relationships with one-stop partners that result in the hiring and ongoing employment of persons with disabilities.

In addition to working with our partners, RSA expects to continue meeting with stakeholder groups in order to receive their input to determine the future direction of the Public VR program's monitoring system. Persons with disabilities, many of whom received services from grantees funded under the Act, or serve as representatives for groups of individuals who have received services, have been influential participants in these meetings, and will continue to be important contributors to the future direction of the Public VR program.

## **How to Use the Guide**

During the last several years, RSA has changed the emphasis of program monitoring from one



that points out instances where a State VR agency is not in compliance with the law and regulations, to a focus on assisting agency staff in identifying both compliance problems, and appropriate providers of TA to correct the problems. This collaborative State-Federal approach is designed to ameliorate State VR agency systems that self-identify and correct problems, and to promote the “buy-in” of State agency personnel responsible for maintaining these systems.

The Self-Assessment and Technical Assistance Guide is designed to determine the extent to which the State VR agency has implemented requirements introduced by the 1992 and 1998 Amendments and to help identify technical assistance needs. The instrumentation has been developed so that any **“NO”** answer will most often indicate a **potential** problem with regard to the agency’s administration of that specific requirement and, as such, may warrant additional exploration to improve its efforts in the area addressed by the question. One exception is in Section 1, which pertains to WIA. Since the WIA requirements have not been regulated by RSA, and full implementation is not required, a negative response will often not be an area of concern.

RSA Regional Office Program and Fiscal Specialists will both be involved in fully applying the Guide. In addition, RSA staff will be collaborating with representatives from the regional components of the Department of Labor, to the extent appropriate, in order to provide TA to the States. RSA staff are available to address any TA concerns elicited through the application of the Self-Assessment and Technical Assistance Guide. In the event that the reviewer requires clarification regarding the interpretation of a given question, or desires additional information, they are asked to contact one of the RSA staff members listed at the end of the Guide.

## **Recording Responses to the Review Questions**

Each review question in the Guide is preceded by a space containing the possible responses, as well as sufficient space to record your response to that specific question. For example, **“1.1.1 Y/N: Y”** indicates that for question number **1**, in subsection 1 of the first section of the Guide, either **“Y/N”** were acceptable responses, and that the reviewer indicated a **“Yes”** response to that question. Some questions also provide space for the reviewer to provide additional information regarding a question. The questions are often preceded by requests for the reviewer to briefly **“describe”** or **“explain”** their response. These questions are indicated by **“\* \*”**. Again, reviewers are provided with adequate space to record concise responses to each of the questions.

## **1. COLLABORATION WITH OTHER AGENCIES, PARTICULARLY WITH PARTNERS UNDER THE WORKFORCE INVESTMENT ACT**

The Workforce Investment Act of 1998 contains Title IV (the Rehabilitation Act Amendments of 1998) and a set of requirements in Titles I and V that provide for greater coordination, collaboration and linkage among a wide variety of employment and training programs. These linking elements include partner program (including the VR program) participation in State and local governance activities pertaining to the Workforce Investment System. It also includes participation as a required partner in the one-stop delivery systems to be developed in one or more local service delivery areas in each State. The VR program and the other partner programs retain separate funding streams and all the requirements of their particular authorizing statutes. All requirements of the Rehabilitation Act, as amended, are retained.

The one-stop delivery system will create demands at the local and State level for partner programs to share costs of core services, common functions such as common intake, and possibly many other functions. The local area one-stop systems will develop with a great deal of autonomy and flexibility and therefore will potentially create an infinite variety of specific situations and requests for partner program participation in services and costs. The task of RSA and the State VR agencies during the initial developmental period will be to both participate in the workforce investment and one-stop delivery systems and to educate the State and Local Workforce Investment Boards and other partners about the requirements of the Rehabilitation Act and appropriate ways in which State VR agencies may participate.

Implementation of some elements of the Workforce Investment Act may be under way already, such as the creation of new State Workforce Investment Boards (SWIB), designation of alternative entities to serve in lieu of a new SWIB, designation of local workforce investment areas, and designation of one-stop operators. Funding under WIA will not begin until the State submits either a WIA Title One State Plan or a Unified State Plan under Title V of WIA. Plan submission can begin as soon as April 1 for implementation July 1 of 1999; as late as April 1, 2000 for implementation by July 1, 2000; or any time in between.

Most of the current structure of one-stop centers and other activities that we commonly think about as WIA are in fact one-stop centers set up under grants from the Department of Labor. These one-stop centers do not have the same requirements for mandatory partners, provision of a specific set of core services, and other WIA features. In general, the grants allowed almost infinite flexibility in the use of the money, guided only by some core principles and the approval of the grant plan by DOL. The State VR agency may or may not even be a participant in the grant-established one-stop centers. It may also be possible to have a State which uses a "transitional WIA Plan" option to begin converting parts of the State system piecemeal. Thus there may be States in which "pre-WIA" and "post-WIA" one-stop centers exist together until July 1, 2000, when all States must have fully implemented WIA.

The rolling implementation period and the existence of pre-WIA one-stop centers and one-stop

centers implemented or converted to WIA requirements during the implementation period will make the conduct of monitoring and the provision of technical assistance challenging from a national viewpoint. It certainly made the development of questions for the Guide challenging. For this reason, it will be important to notice where questions refer to items or requirements “under WIA,” and to be sure not to apply WIA standards to non-WIA one-stop centers.

Because the implementation of WIA is still in the developmental phase, this section of the Guide contains some information that reflect RSA’s current positions and interpretations. However, some or all of these interpretations could be changed as a result of such events as the publication of DOL interim final regulations. Some of the issues in this Guide are currently being debated with the Office of Management and Budget (OMB). Changes could also occur as a result of negotiations leading to the publication of the WIA final regulations, now scheduled for December 31, 1999. Such issues were included in the Guide because they serve to highlight important aspects of WIA implementation. Also, the Guide is written with a technical assistance intent. Any findings should be used in a manner consistent with the provision of technical assistance, and will obviously need to consider implementing regulations and guidance published subsequent to the release of this guide.

One of the major issues in moving into the WIA one-stop environment involves the determination of the appropriateness of participation in particular core and other services, AND the determination of how the costs of appropriate services should be shared. When the Guide is used, both the RSA Regional Office Program and Fiscal Specialists should be involved with, and, to the extent appropriate, (consistent with the policy of collaborating with our WIA partners in the provision of technical assistance to the States) representatives from the regional components of the Department of Labor.

## **1.1 FISCAL REVIEW OF ONE-STOP CENTERS ESTABLISHED UNDER DOL GRANTS**

One-stop centers established under any authority have come to be associated with WIA. When the State VR agency is involved in a one-stop center, the issues and questions are similar regardless of the authority under which the one-stop center operates. In this transition year, RSA will review financial questions applicable to all one-stop centers. This section of financial questions pertains to one-stop centers still operating under the DOL grant authority.

## Review Questions

(place each response to the right of the colon)

**1.1.1**      **Y/N:**      Is the State VR agency involved in any one-stop center operating under the DOL grant authority?

Consider involvement to be any instance in which the State VR agency is included in any activity in a one-stop center which affords a VR eligible individual or VR applicant access to VR agency services. Involvement does not necessarily mean co-location. It can also mean an electronic link, part-time staffing by an itinerant counselor. Involvement could also mean any arrangement the State VR agency has by which VR eligible individuals or VR applicants have access to any services provided at the one-stop center.

If No, skip to Section 1.2: STATE GOVERNANCE UNDER WIA

If Yes, in how many one-stop centers is the State VR agency involved as defined above?

\*\*

**1.1.2**      **Y/N:**      In the locations defined in Question 1.1.1 above, is the State VR agency sharing in the costs of operating the one-stop center?

The “costs of operating the one-stop center” refer to administrative costs only and not to the purchase of or sharing in the costs of services of the one-stop center.

If Yes, for EACH center, briefly describe the costs being shared and the rationale used for their allocation, keeping in mind that cost-sharing can include staff time or other elements of worth contributed to the functioning of the one-stop center.

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**1.1.3**      **Y/N:**      For EACH one-stop center in which the State VR agency is sharing in the costs of operating the one-stop center, is the manner of allocating operational costs of the one-stop center to the State VR agency in accordance with applicable Federal cost principles (e.g., OMB circulars A-87, A-122, and others)?

Answer No if the State VR agency is sharing in operating costs of

the center but the allocation method is not in accordance with applicable Federal cost principles.

If No, for EACH center where costs are not being shared by the State VR agency in accordance with applicable Federal cost principles, briefly describe the methodology being used to assign costs to the State VR agency.

\*\*

**1.1.4**      **Y/N:**      In the locations defined in Question 1.1.1 above, is the State VR agency sharing in the costs of services provided at the one-stop center?

The phrase “sharing in the cost of services provided at the one-stop center” can include fee-for-service agreements, in-kind participation, cost allocation or fixed fee arrangements.

If Yes, enter the number of centers in which the State VR agency is participating in the cost of services below.

\*\*

**1.1.5**      **Y/N:**      Where the State VR agency is participating in the cost of services as indicated by the answer to Question 1.1.4 above, is the State VR agency doing so in accordance with all provisions of the Rehabilitation Act in EACH one-stop center?

If No, briefly describe for EACH one-stop center how State VR agency participation in the cost of services is not in accordance with the Rehabilitation Act. Examples might include paying for services for individuals who are not VR clients or applicants, services available under Wagner-Peyser, etc.

\*\*

**1.1.6**      **Y/N:**      For EACH one-stop center in which the State VR agency is sharing in the costs of services at the one-stop center, is the method for determining State VR agency costs for services at the one-stop center in accordance with applicable federal cost principles (e.g., OMB circulars, A-87, A-122, and others)?

Answer No if the State VR agency is sharing in costs of services at

the center but the method for determining State VR agency participation is not in accordance with applicable federal cost principles (e.g., OMB circulars, A-87, A-122, and others).

If No, for EACH center where costs are not being shared by the State VR agencies in accordance with applicable federal cost principles, briefly describe the methodology being used to determine costs to the State VR agency.

\*\*

**1.1.7 Y/N:** Is the agency sharing in the costs of one-stop centers in which they are not physically co-located?

Note that the State VR agency could be appropriately paying for a share of an electronic link or in the cost of a service it wants for individuals with disabilities without being physically co-located. There is not necessarily any inappropriate answer to this question.

If Yes, for EACH one-stop center, briefly describe what costs are being shared and the rationale for this participation.

\*\*

## **1.2 STATE GOVERNANCE UNDER WIA**

This, and all of the following sections, assumes that the State has begun to implement WIA. The first step in such implementation is the establishment of a State Workforce Investment Board under WIA section 111(b) or the designation of an existing alternative entity to serve in lieu of a SWIB in accordance with WIA section 111(e).

### **Review Questions**

**1.2.1 Y/N:** Has the State established either a SWIB or an alternative entity to act as a SWIB as required by WIA?

If No, stop now. No further questions apply.

If Yes, please continue.

### **Representation on the State Workforce Investment Board**

These questions pertain to the representation of the State VR agency at the State level in planning and implementing the State Workforce Investment System. The State VR agency can be represented on the State Workforce Investment Board, an alternative board elected by the Governor under WIA section 111(e), or in the case of an alternative board that does not include the State VR agency, in an alternative manner described in the State Workforce Investment Plan.

- 1.2.2 Y/N/NA:** If the State appointed a new Workforce Investment Board pursuant to WIA section 111(b), is the director of the Designated State Unit a member of the new Workforce Investment Board?
- Answer NA if the State did not elect to appoint a new State Workforce Investment Board pursuant to WIA section 111(b).
- 1.2.3 Y/N/NA:** If the State has selected to use an alternative board pursuant to WIA section 111(e), is the director of the Designated State Unit a member of the alternative board?
- Answer NA if the State did not elect to use an alternative board.
- 1.2.4 Y/N/NA:** If the State elected to use an alternative board that DID NOT include the director of the Designated State Unit, has the State developed a method of involving the State VR agency in the development of the State Workforce Investment System and the State Workforce Investment Plan that is satisfactory to the State VR agency?
- Answer NA if the State did not elect to use an alternative board, or if the State VR agency is represented on the alternative board.
- If Yes, briefly describe the method used to involve the State VR agency.

\*\*

### **State VR Agency Participation in Financing the State Workforce Investment Board**

This question relates to financial support of the operations of the State Workforce Investment Board. In general, VR funds have been expended only to support administrative activities up through the Designated State Agency (DSA) level, not to the support of levels higher than or outside of the DSA, such as funding the operational costs of entities such as the State Workforce Investment Board. Funding for the State Workforce Investment Board and its activities, such as the cost of holding Board meetings, staffing of the Board, etc. is included in WIA sections 127(b)(1), 132(b)(1) and 132(b)(2), which indicate that these costs are to be paid for out of WIA funds set aside

for state-level activities.

As State Workforce Boards have not been fully implemented with all partners until now, it is difficult to predict the variety and appropriateness of situations that might occur. For the purposes of the question below, take a broad view of the issue. Consider the use of VR funds for support of the actual Board staff and the cost of board meetings, the proration of costs for system-wide activities, or basically any cost other than the cost of VR staff travel and individual expenses in answering this question. While some activities that emphasized VR agency services and services to individuals with disabilities may prove to be an appropriate expense, the purpose of this question at this time is to determine the kinds of financial demands that are occurring at the State level and to determine if there are any policy implications for the VR program nationally.

- 1.2.5**      **Y/N/NA:**      Does the State Workforce Investment Board or the alternative board selected in lieu of establishing a new State Workforce Investment Board plan to assess a part of the operating costs of the State Workforce Investment Board or alternative board to the State VR agency?

If Yes, briefly describe the type of costs the VR agency is being asked to share.

\*\*

### **State Workforce Investment Plan Participation**

The VR program is one of several programs that may be included in a Unified State Workforce Investment Plan as described in section 501 of WIA. The VR State plan is also linked to the submission date of the State Workforce Investment Plan (section 101(a)(1)(A) of the Rehabilitation Act). The State VR plan must be submitted at the same time as the State Workforce Investment Plan regardless of whether the State VR plan is included in a unified plan.



- 1.2.6 Y/N/NA:** Is the State VR agency aware of and planning to meet the requirement to submit the State VR plan at the same time as the State WIA plan?
- If No, briefly explain.
- \*\*
- 1.2.7 Y/N/NA:** Is the State planning to submit, prior to April 1 of the year 2000, a Unified Workforce Investment Plan under WIA section 501 that includes the VR State plan?
- Answer No if the State has definitely decided not to submit a unified plan, or has decided to submit a unified plan that does not include the VR State plan.
- Answer NA if the State has not yet decided whether to submit a unified plan, or has not yet decided whether to include VR in a unified plan submission.
- If Yes, when was the unified plan submitted or is there an estimated time for submittal of the Unified Plan? Briefly describe the extent of the VR agency's involvement in developing the unified plan.
- \*\*
- 1.2.8 Y/N/NA:** Does the State Unified Workforce Investment Plan format allow for the submission of the State VR plan as a separate section or unit of the plan?
- Answer Yes if the plan is a self-contained unit in some way, even if as an appendix to an additional unified plan document.
- Answer No if the State VR plan requirements are to be "blended" throughout a document.
- Answer NA if the State has not decided on format; the State is not including VR in a unified plan submission; or, the State is not submitting a unified plan.
- 1.2.9 Y/N/NA:** Has the State decided to submit a separate Title I WIA plan under WIA section 112 for implementation in FY 2000? (That is, does the State expect to submit a separate WIA plan before April 1, 2000?)

**1.2.10 Y/N/NA:** Answer No if the State has definitely decided not to submit a separate plan prior to April 1, 2000, or has decided to submit a unified plan.

Answer NA if the State has not yet decided whether to submit a separate plan.

If Yes, when was the separate plan submitted or is there an estimated time for submittal of the separate plan?

\*\*

**1.2.11 Y/N/NA:** If the State is submitting a separate plan under Section 112 of WIA or a unified plan under section 501 of WIA THAT DOES NOT INCLUDE THE STATE VR PROGRAM, what has the State VR agency done to ensure that the separate or unified WIA plan contains no provisions affecting the VR program that would be inconsistent with provisions of the Rehabilitation Act?

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**1.2.12** What contacts has the State VR agency had with other partner programs with respect to the development of a WIA plan?

\*\*

### **Accountability Issues at the State Level**

WIA core performance measures (WIA section 136(a) and reporting measures (WIA section 136(d)(2)) apply to workforce investment activities. The term “workforce investment activities” is defined (WIA section 101(51)) as employment and training activities and youth activities. These terms are defined (WIA section’s 101(14) and (52)) as pertaining to activities authorized and funded under Title I of WIA. Further, the VR program is clearly excluded from the performance incentive aspects of the WIA accountability system found in WIA section 503. The VR program is not listed among those programs to which the incentives and sanctions provisions and the use of WIA core performance measures apply.

Therefore VR programs are not required to use WIA core performance measures and reporting requirements except as described below.

Section 106(a)(1)(c) of the Rehabilitation Act requires that the VR Evaluation Standards and Performance Indicators, to the maximum extent practicable, be consistent with the

core indicators of performance established under section 136(b) of WIA. Specific measures for the WIA core indicators have not yet been developed. Such specific measures as are applicable and practical will be incorporated by RSA into the VR Evaluation Standards and Performance Indicators.

Likewise, the Commissioner of RSA is required, to the maximum extent appropriate (section 11(c) of the Rehabilitation Act) to report on all information described in section 136(d) of WIA. Section 101(d)(10) of the Rehabilitation Act further specifies that the Commissioner shall require annual reporting on those specific data elements described in section 136(d)(2) of WIA that are determined to be relevant in assessing the performance of Designated State Units in carrying out the VR program. RSA will promulgate reporting requirements relevant to the VR program, giving full consideration to the specific reporting measures to be established under WIA.

Therefore, State VR agencies are to be evaluated and to report on those measures and elements determined by RSA. WIA does not require State VR agencies to report to State or Local Boards using WIA core performance measures or reporting requirements. However, State VR agencies may choose to evaluate themselves using measures (including WIA measures) in addition to those required by RSA.

**1.2.13      Y/N/NA:**      Does the State Board plan to require that the State VR agency use the Core Performance Measures required under WIA section 136(b) to measure VR program performance, negotiate performance levels with the State Board and the Governor, and/or to report results to the State Board and the Governor?

If Yes to any part of this question, describe the State Board requirements related to WIA Core Performance Measures.

\*\*

**1.2.14      Y/N/NA:**      Does the State Board plan to require that the State VR agency use the reporting measures (other than the core performance measures addressed in the question above) found under WIA section 136(d) to report results to the State Board and the Governor?

If Yes, describe the State Board requirements related to WIA reporting measures.

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### **Cost Allocation Issues at the State Level**

Determination of costs in one-stop centers that are allowable for payment by partner programs and the subsequent allocation of such costs to the partner programs may be two of the more difficult tasks involved in the implementation of WIA. While technically the determination of allowable costs and the allocation of costs among programs are two different issues, the discussion in the context of WIA lumps these issues together. While in some States the one-stop center system may function as a State system, in others each local area may be autonomous. These questions apply to the situation in which the State Board and the Governor establish ground rules for all local areas.

**1.2.15 Y/N/NA:** Has the State Board established policies or guidelines for local areas to follow regarding a method or methods to allocate costs among programs?

Answer No if the State Board has definitely decided not to establish such guidance. Answer NA if the State Board has not decided or not yet considered this issue.

**1.2.16 Y/N/NA:** If the State Board has established policies or guidelines for local areas to follow regarding a method or methods to allocate costs among programs, are these policies consistent with applicable OMB circulars as required in WIA section 184(2), particularly A-87 or A-122?

Answer No if guidance has been established that is not consistent with OMB circulars (such as the planned use of the Technical Assistance Guide methodology). Answer NA if the State has not established any guidance requirements related to cost allocation.

**1.2.17 Y/N/NA:** Has the State Board established any policies with regard to VR program participation in core services?

Answer No if the State Board has definitely decided not to establish such guidance. Answer NA if the State Board has not decided or not yet considered this issue.

**1.2.18 Y/N/NA:** If the State Board has established any policies with regard to VR program participation in core services, were they established with the approval of the State VR agency AND do the policies meet the test outlined by the Commissioner of RSA?

The Commissioner's policy regarding VR participation in core services is as follows:

"The VR agency may participate in the cost of an applicable core service for a VR applicant or a VR eligible individual, providing that the State VR Director determines that the service is not a customary or typical service generally available to all customers of the system and previously provided under the Wagner-Peyser program; and, that it is a new service that has a vocational rehabilitation focus consistent with the provisions of the Title I Vocational Rehabilitation State Plan or an existing service that has been modified, adapted, expanded, or reconfigured to have a vocational rehabilitation focus consistent with the provisions of the Title I Vocational Rehabilitation State Plan."

Answer NA if the State has established no guidance requirements related to VR agency participation in core services.

Answer No if guidance has been established that was not done with the agreement of the State VR agency OR is not consistent with the Commissioner's policy, or both. Briefly explain the problem with the guidance.

\*\*

**1.2.19 Y/N/NA:** Has the State Board established any policies with regard to VR program participation in services other than core services? Consider situations in which State VR agency funds would be included with others in Individual Training Accounts, for example.

Answer No if the State Board has definitely decided not to establish such guidance. Answer NA if the State Board has not decided or not yet considered this issue.

**1.2.20 Y/N/NA:** If the State has established any policies with regard to VR program participation in other services, do the policies meet all requirements of the Rehabilitation Act and were they established with the consent of the State VR agency?

Answer Yes, only if the State Board has established policies with regard to VR program participation in other services AND the policies were established with the approval of the State VR agency.  
Answer NA if the State has not established any guidance requirements related to VR agency participation in core services.  
Answer No if guidance has been established that is not consistent with the provisions of the Rehabilitation Act or was established without the agreement of the State VR agency.

Briefly explain the problem with the guidance.

\*\*

## Other State Governance Issues

These issues are included to ensure that there are no decisions of policies undertaken at the State Workforce Investment Board or alternative board level that inappropriately affect the State VR agency. Some of these questions are based on concerns that have been raised as State VR agencies became involved with one-stop centers under the One-Stop Grants. Others are raised based on the possibility of misunderstanding or misinterpretation of language contained in WIA.

**1.2.21 Y/N/NA:** Does the State Board now, or is it planning to in the future, require the State VR agency to provide services or prioritize individuals to be served in ways that are contrary to the provisions of the Rehabilitation Act?

If Yes, briefly describe the State Board requirements and the ways in which the requirements are contrary to the provisions of the Rehabilitation Act.

\*\*

**1.2.22 Y/N/NA:** Has a representative of the State Board been appointed as a member of the State VR agency State Rehabilitation Council (SRC)?

**1.2.23 Y/N/NA:** Is the relationship of the State Board to the SRC appropriate?

The SWIB and the SRC are different entities established for different purposes. There should be no implied hierarchy or governance responsibility implied because of the State Board membership on the SRC.

If No, briefly describe the nature of the inappropriate relationship between the State Board and the SRC.

\*\*

**1.2.24 Y/N/NA:** Does the State Board now, or in the future, plan for activities or an organizational structure that may be contrary to the organizational unit integrity of the VR program (section 101(a)(2)(B) of the Rehabilitation Act)? Consider in this questions regarding allocation of funds, the operational environment of the agency, and personnel and staff supervision.

If Yes, briefly describe the ways in which the organizational integrity is compromised.

\*\*

**1.2.25 Y/N/NA:** Has the State VR agency entered into cooperative agreements at the State level with other components of the Statewide Workforce Investment System as required by section 101 (a)(11)(A) of the Rehabilitation Act?

If Yes, list the entities with which cooperative agreements have been executed.

\*\*

**1.2.26 Y/N/NA:** Has the State VR agency replicated at the local level the cooperative agreements entered into at the State level with other components of the Statewide Workforce Investment System, as required by section 101(a)(11)(B) of the Rehabilitation Act?

Answer NA if the State VR agency has not entered into any State level cooperative agreements as required by section 101(a)(11)(A).

If Yes, list the entities with which the cooperative agreements have been replicated for at least one local area or level.

\*\*

**1.2.27 Y/N/NA:** Does the State VR agency have any specific concerns about meeting VR program confidentiality requirements related to the development of the Statewide Workforce Investment System or the local workforce investment systems and one-stop service delivery centers?

Consider in this answer only situations that have materialized to the

extent of having plans on paper or systems implemented that pose a concern related to confidentiality requirements.

If Yes, describe the nature of the concerns, the level at which the concern originated (i.e., State or local) and the number of locations in the State in which a concern exists.

\*\*

### **Optional Questions Related to State Board, the Statewide Workforce Investment System, and Services to Individuals with Disabilities**

These questions relate to the efforts the Statewide Workforce Investment System and the State Board are making to include individuals with disabilities in the system as a whole and in the one-stop centers in particular. These are not questions that are required nor should the State VR agency or the RSA Regional Office Representative go to great lengths to answer them, if the answers are not presently known, just for purposes of this report. However, if the answers are not known, these are questions that the State VR agency should begin to investigate with its State Board. If the answers are not favorable to providing good services to individuals with disabilities, there may be a role for both the State VR agency and RSA in bringing the needs of individuals with disabilities to the attention of the State Board and the Governor.

Does the State Board plan for development of Local Workforce Investment Plans include a requirement that the “at least one physical site” one-stop center be accessible in the following ways:

- |               |                |   |
|---------------|----------------|---|
| <b>1.2.28</b> | <b>Y/N/NA:</b> | accessible to all individuals through public transportation when public transportation is available in the community?   |
| <b>1.2.29</b> | <b>Y/N/NA:</b> | fully accessible to individuals with disabilities in regard to the physical site and program space?   |
| <b>1.2.30</b> | <b>Y/N/NA:</b> | fully accessible regarding electronic and self-service program components?  |
| <b>1.2.31</b> | <b>Y/N/NA:</b> | fully accessible in terms of all one-stop services, WIA program services, and partner services?   |
| <b>1.2.32</b> | <b>Y/N/NA:</b> | Does the State Board plan for development of Local Workforce Investment Plans include a requirement that the “at least one physical site” one-stop center be reviewed or assessed to determine that the accessibility claimed in the local plan is actually achieved? |



Consider in the answers to Questions 1.2.28-1.2.31 any accessibility requirements related to the guidance the State Board prepares for the Local Boards and State Board requirements for review of Local Plans that would assure accessibility. The intent of this question is to look for some activity in addition to completion of an assurance page in the Local Plan. Universality is one of the core principles of WIA and the one-stop center system. This can become an even more critical element when VR programs are co-located.

**1.2.33**      **Y/N/NA:**      Has the State Board developed or required the use of data collection and reporting systems and measures that adequately capture information related to individuals with disabilities served by the Statewide Workforce Investment System?

WIA reporting requirements found in section 136(d)(2)(F) require States to capture core performance outcome measures for subgroups, including individuals with disabilities. In addition, we may want to know if there are data collection systems in the workforce investment system that can identify service areas not being accessed by individuals with disabilities, and, therefore, are not readily available to VR eligible individuals who may wish to participate.

Answer NA if the State does not have a data collection system established to collect required WIA data (even if they have a data collection system established for JTPA). NA will likely be the predominant answer in that actual WIA core performance measures have not yet been defined.

Answer Yes if the State has now or has already planned a data collection system that collects at a minimum the information required to meet the WIA core performance standards for adults AND can break participants out by disability status.

Answer No if there is a data collection system, but one that does not collect core performance measures OR cannot track disability status.

### **1.3      LOCAL GOVERNANCE AND ONE-STOP CENTERS UNDER WIA**

This section begins with a general question to determine the current status of the development of the State's workforce investment system and one-stop service delivery system at the local level.

**1.3.1**      **Y/N/NA:**      Has the State established any Local Boards under WIA?

If Yes, indicate how many local areas the State has identified. Is this the total number the State will identify or will this number increase? Increase to what number, if known?

\*\*

If No, skip to Section 1.4, CLIENT ASSISTANCE PROGRAM PARTICIPATION IN THE WORKFORCE INVESTMENT SYSTEM.

### **Representation on the Local Workforce Investment Board**

These questions pertain to the representation of the State VR agency at the local level in planning and implementing the local workforce investment system.

**1.3.2 Y/N/NA:** Is the Designated State Unit a member of all Local Workforce Investment Boards formally established under WIA?

Consider only those Boards formally established by the State under WIA, not those that may be in existence under the One-Stop Grants but not yet formally designated under WIA. Use the number of local areas you identified in Question 1.3.1 of this section as your reference group.

Answer Yes only if the State VR agency is represented on ALL local boards established under WIA.

Answer NA if the State has not yet established local boards under WIA.

Answer No if the State has established one or more local boards under WIA but the State VR agency is not represented on one or more of these boards. Enter the number of local boards on which the State VR agency is not represented below.

\*\*

### **State VR Agency Participation in Financing the Local Workforce Investment Board**

This question relates to financial support of the operations of the Local Workforce Investment Boards. In general, VR funds have been expended only to support administrative activities up through the Designated State Agency level, not to the support of levels higher than or outside of the DSA, such as funding the operational costs of

entities such as the Local Workforce Investment Boards. Funding for the Local Workforce Investment Board and its activities (such as the cost of holding Board meetings, staffing of the Board, etc.) is included in WIA sections 128(b) and 133(b), which indicates that these costs are to be paid for out of WIA funds set aside for local-level activities.

As Local Workforce Boards have not been fully implemented with all partners until now, it is difficult to predict the variety and appropriateness of the situations that might occur. For the purposes of this question, take a broad view of the issue. Consider the use of VR funds for support of the actual Board staff and the cost of board meetings, the proration of costs for local area-wide activities generated by the Local Board, or basically any cost other than the cost of VR staff travel and individual expenses to attend board meetings in answering this question. While some activities that emphasized VR agency services and services to individuals with disabilities may prove to be an appropriate expense, the purpose of this question at this time is to determine the kinds of financial demands that are occurring at the state level and to determine if there are any policy implications for the VR program nationally.

**1.3.3      Y/N/NA:**      Does any Local Workforce Investment Board established under WIA plan to assess a part of the operating costs of the Local Workforce Investment Board to the State VR agency?

Note that we are asking about LOCAL BOARD expenses, not one-stop center expenses.

If Yes, for EACH LOCAL BOARD who is planning to charge costs to the State VR agency, briefly describe the type of costs the VR agency is being asked to share.

\*\*

**1.3.4**      **Y/N/NA:**      Has the State VR agency chosen not to participate on any Local Workforce Investment Boards established under WIA?

If Yes, list the reason for nonparticipation for EACH local board on which the State VR agency has chosen not to participate.

\*\*

### **Local Workforce Investment Plan Participation**

The State VR agency, as a required member of the Local Board, should be involved in the development of the Local Workforce Investment Plan.

**1.3.5**      **Y/N/NA:**      Is the State VR agency a participant in the development of the Local Workforce Investment Plan with ALL local Boards established under WIA?

Consider that the State VR agency has participated if the State VR agency indicates that their role was satisfactory to them, even if the participation was minor. The intent of the question is to determine the extent to which participation that is relevant and desired by the State VR agency is occurring.

Answer Yes only if the State VR agency participated in the development of ALL Local Workforce Investment Boards established under WIA.

Answer NA if no Local Workforce Investment Plans are being or have been developed under WIA.

Answer No if one or more Local Workforce Investment Plans have been or are being developed under WIA but the State VR agency has not participated to the extent that it finds appropriate. Enter the number of local plans in which the State VR agency has not fully participated below.

\*\*

### **Accountability Issues at the Local Level**

WIA core performance measures (WIA section 136(a)) and reporting measures (WIA section 136(d)(2)) apply to workforce investment activities. The term “workforce investment activities” is defined (WIA section 101(51)) as employment and training

activities and youth activities. These terms are defined (WIA section 101(14)) and (52)) as pertaining to activities authorized and funded under Title I of WIA.

Furthermore, the VR program is clearly excluded from the performance incentive aspects of the WIA accountability system found in WIA section 503. The VR program is not listed among those programs to which the incentives and sanctions provisions and the use of WIA core performance measures apply.

Therefore VR programs are not required to use WIA core performance measures and reporting requirements except as described below.

Section 106(a)(1)(c) of the Rehabilitation Act requires that the VR Evaluation Standards and Performance Indicators, to the maximum extent practicable, be consistent with the core indicators of performance established under section 136(b) of WIA. Specific measures for the WIA core indicators have not yet been developed. Such specific measures as are applicable and practical will be incorporated by RSA into the VR Evaluation Standards and Performance Indicators.

Likewise, the Commissioner of RSA is required, to the maximum extent appropriate (section 11 of the Rehabilitation Act) to report on all information described in section 136(d) of WIA. Section 101(d)(10) of the Rehabilitation Act further specifies that the Commissioner shall require annual reporting on those specific data elements described in section 136(d)(2) of WIA that are determined to be relevant in assessing the performance of designated State units in carrying out the vocational rehabilitation program. RSA will promulgate reporting requirements relevant to the VR program, giving full consideration to the specific reporting measures to be established under WIA.

Therefore, State VR agencies are to be evaluated and to report on those measures and elements determined by RSA. WIA does not require State VR agencies to report to State or Local Boards using WIA core performance measures or reporting requirements.

At the local level, this means that the State VR program does not have an obligation to participate in the collection of information required for WIA reporting purposes. Further, individuals served by the VR program should be included for WIA accountability purposes at the local one-stop only if the individual would otherwise be counted based on receiving WIA funded services at the one-stop center. The State VR agency could, however, share performance information related to the VR Standards and Indicators with members of the State and local workforce investment systems. State VR agencies may also choose to evaluate themselves using measures (including WIA measures) in addition to those required by RSA.

- 1.3.6**            **Y/N/NA:**      Does any Local Board plan to require that the State VR agency use the Core Performance Measures required under WIA 136(b) to measure VR program performance, negotiate performance levels with the local Board, and/or to report results to the Local Board? If

Yes, briefly describe EACH Local Board requirements of the State VR agency related to WIA Core Performance Measures.

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- 1.3.7**      **Y/N/NA:**      Does any Local Board plan to require that the State VR agency use the reporting measures (other than the core performance levels with the Local Board, and/or to report results to the Local Board? If Yes, briefly describe EACH Local Board requirements of the State VR agency related to WIA Core Performance Measures.

If Yes, describe the WIA reporting requirements EACH Local Board is applying to the State VR agency.

\*\*

#### **Memoranda of Understanding (MOU) with Local Boards**

- 1.3.8**      **Y/N/NA:**      Has the State VR agency entered into a Memorandum of Understanding (MOU) with any of the formally established Local Boards in the local areas established above?

If Yes, enter the number of Local Boards with which the State VR agency has completed a MOU below. Note that we are counting Local Boards, not MOU's per se. A Local Board with more than one one-stop center and more than one one-stop center operator in its local area may well have executed more than one MOU with the partners.

\*\*

- 1.3.9**      **Y/N/NA:**      Does the State VR agency have a process for Central Office review of each MOU prior to approval?

- 1.3.10**      **Y/N/NA:**      Does the State VR agency have written guidelines for review of MOUs?

The Workforce Investment Act in section 121(c), states that the MOU among/between required one-stop partners and the Local Board must contain the following elements:

- A description of the services to be provided through the one-stop delivery system;
- How the costs of such services and the operating costs of the system will be funded;
- Methods of referral of individuals between the one-stop operator and the one-stop partners for appropriate services and activities; and
- The duration of the memorandum and the procedures for amending the memorandum during the term of the memorandum.

**1.3.11 Y/N/NA:** Does the State VR agency process or written guidelines for MOU review include all elements required by WIA section 121(c)?

Answer NA if the State VR agency has not established any process or written guidelines.

If No, briefly describe which elements are not addressed in the State VR agency process or written guidelines.

\*\*

### **Cost Allocation Issues at the Local Level**

Determination of costs in one-stop centers that are allowable for payment by partner programs and the subsequent allocation of such costs to the partner programs may be two of the more difficult tasks involved in the implementation of WIA. While technically the determination of allowable costs and the allocation of costs among programs are two different issues, the discussion in the context of WIA lumps these issues together. While in some States the one-stop center system may function as a State system, in others each local area may be autonomous. These questions apply to the situation in which the Local Board establishes ground rules for the local area. Most of these questions will likely be answered NA in States where no MOUs have been signed. However, some Local Boards may be far enough along in a planning process that some of the answers in this section may be known even prior to the actual execution of an MOU.

**1.3.12 Y/N/NA:** Has any Local Board established policies or guidelines to follow regarding a method or methods to allocate any costs among programs?

Answer No if all Local Boards have definitely decided not to establish such guidance.

Answer NA if all Local Boards have not decided or not yet considered this issue.

**1.3.13**      **Y/N/NA:**      If any Local Board has established policies or guidelines for local areas to follow regarding a method or methods to allocate costs of services among programs, are these policies consistent with the requirements of applicable federal cost principles (e.g., OMB circulars, particularly A-87 or A-122, as required by WIA section 184(a)(2))?

Answer NA if no Local Board has established any guidance requirements related to cost allocation for services.

Answer No if guidance has been established by ANY Local Board that is not consistent with OMB circulars (such as the planned use of the TAG methodology).

If No, enter the number of Local Boards that have established inappropriate guidance here. Briefly describe the nature of the inappropriate guidance for EACH Local Board that has established such inappropriate guidance.

\*\*

If Yes, enter the number of Local Boards that have established appropriate guidance here. Briefly describe for EACH Local Board the method or basis for cost allocation here.

\*\*

**1.3.14**      **Y/N/NA:**      If any Local Board has established policies or guidelines for local areas to follow regarding a method or methods to allocate costs of operating expenses among programs, are these policies consistent with the requirements of applicable federal cost principles (e.g., OMB circulars, particularly A-87 or A-122, as required by WIA section 184(a)(2))?

Answer NA if no Local Board has established any guidance requirements related to cost allocation for services.



Answer No if guidance has been established by ANY Local Board that is not consistent with OMB circulars.

If No, enter the number of Local Boards that have established inappropriate guidance here. Briefly describe the nature of the inappropriate guidance for EACH Local Board that has established such inappropriate guidance.

\*\*

If Yes, enter the number of Local Boards that have established appropriate guidance here. Briefly describe for EACH Local Board the method or basis for cost allocation here.

\*\*

**1.3.15**      **Y/N/NA:**      Has any Local Board established any policies with regard to VR program participation in core services?

Answer No if all Local Boards have definitely decided not to establish such guidance.

Answer NA if all Local Boards have not decided or not yet considered this issue.

If Yes, for EACH Local Board, list the core services in which the State VR agency is to participate and the method by which the State VR agency will participate (cost allocation, fee-for-service, in-kind, fixed fee payment, etc.)

\*\*

**1.3.16**      **Y/N/NA:**      If any Local Board has established any policies with regard to VR program participation in core services, were they established with the consent of the State VR agency and do the policies meet the test outlined by the Commissioner of RSA?

The Commissioner's policy regarding VR participation in core services is as follows:

- The VR agency may participate in the cost of an applicable core service, providing that the State VR Director determines that the service is not a customary or typical service generally available to all customers of the system and previously provided under the Wagner-Peyser program; and, that it is a new service that has a vocational rehabilitation focus consistent with the provisions of the Title I Vocational Rehabilitation State Plan or an existing service that has been modified, adapted, expanded, or reconfigured to have a vocational rehabilitation focus consistent with the provisions of the Title I Vocational Rehabilitation State Plan.

Answer Yes if all Local Boards that have established policy regarding VR participation have done so with the agreement of the State VR agency and the Local Board policy is consistent with the Commissioner's policy regarding VR participation in core services.

Answer NA if no Local Board has established any policy requirements related to VR agency participation in core services.

Answer No if policy has been established by any Local Board that was not done with the agreement of the State VR agency or is not consistent with the Commissioner's policy. Enter the number of Local Boards with problematic policies here. For EACH Local Board, briefly explain the problem.

\*\*

**1.3.17**      **Y/N/NA:**      If the State VR agency is participating in the cost of core services in some way, is the State VR agency also participating in the cost of overhead expenses related to the provision of core services?

Answer NA if the State VR agency is not participating in the cost of core services.

Answer No if the State VR agency is participating in the cost of core services but NOT in the cost of overhead related to the provision of core services.

If Yes, for EACH Local Board, describe the method of cost allocation or payment used.

\*\*

**1.3.18 Y/N/NA:** Has any Local Board established policies with regard to VR program participation in services other than core services, such as intensive, training or support services? Consider situations in which State VR agency funds would be included with others in Individual Training Accounts, for example.

Answer No if the State Board has definitely decided not to establish such guidance.

Answer NA if the State Board has not decided or not yet considered this issue.

If Yes, enter the number of Local Boards here. For EACH Local Board, list the core services in which the State VR agency is to participate and the method by which the State VR agency will participate (cost allocation, fee-for-service, in-kind, fixed fee payment, etc.).

\*\*

**1.3.19 Y/N/NA:** If any Local Board has established policies with regard to VR program participation in other services, were they established with the consent of the State VR agency and do the policies meet all requirements of the Rehabilitation Act?

Answer NA if the State has not established any guidance requirements related to VR agency participation in core services.

Answer No if guidance has been established that was not done with the agreement of the State VR agency or is not consistent with the requirements of the Rehabilitation Act. Enter the number of Local Boards with inappropriate policies here. For EACH Local Board, briefly explain the problem with the policy.

\*\*

**1.3.20 Y/N/NA:** Is the State VR agency supporting any costs of one-stop centers in which they are not physically co-located?

If yes, for EACH center, describe the costs being supported and the rationale for this participation.

\*\*

### Other Local Governance Issues

These issues are included to ensure that there are no decisions of policies undertaken at the Local Workforce Investment Board level that inappropriately affect the State VR agency.

**1.3.21 Y/N/NA:** Does any Local Board now or are any planning to in the future require the State VR agency to provide services or prioritize individuals to be served in ways that are contrary to the provisions of the Rehabilitation Act?

Specifically consider in this question any issues related to limitations on types or amounts of services or on methods of assigning priority to groups of individuals with disabilities in ways other than on the basis of significance of disability and order of selection.

Answer NA if no Local Board has made a decision or has considered the issues yet.

If Yes, Enter the number of Local Boards with such inappropriate plans. Briefly describe for EACH Local Board the ways in which its requirements are contrary to the provisions of the Rehabilitation Act.

\*\*

**1.3.22 Y/N/NA:** Does any Local Board now or in the future plan for activities or an organizational structure that may be contrary to the organizational unit integrity of the VR program? Consider in this question the ability of the State VR director to make decisions regarding allocation of funds, the operational environment of the agency, and personnel and staff supervision, particularly as applied to one-stop settings.

If Yes, enter the number of Local Boards with inappropriate plans here. Briefly describe for EACH Local Board the ways in which the plans or activities compromise organizational integrity.

\*\*

**NOTE: The following section is to be completed by Client Assistance Program staff.**

#### **1.4 Client Assistance Program Participation in the Workforce Investment System**

##### **Required One-Stop Partners:**

**PARTNERS:** Section 121(b)(1)(B) of the Workforce Investment Act (WIA) specifies who must be partners of the one-stop delivery system. In particular, section 121(b)(1)(B)(iv) of WIA states that the one-stop system **must** include "programs authorized under title I of the Rehabilitation Act of 1973..."(Act). The Client Assistance Program (CAP), authorized under section 112 of the Act, satisfies the requirement of section 121(b)(1)(B)(iv) of WIA and thus is a required partner of the one-stop system.

**LIMITATION ON REQUIRED PARTNERS:** Although CAP is a required partner of the one-stop system, CAP is not required to provide all of the mandatory core services listed in section 134(d)(2) of WIA. Section 121(b)(1)(A) of WIA states that required partners, such as the CAP, shall:

- "(i) make available to participants, through a one-stop delivery system, the services described in section 134(d)(2) that are *applicable to such program or activities; and*
- (ii) participate in the operation of such system *consistent with...the requirements of the Federal law in which the program of activities are authorized.*" (emphasis added).

In addition to the limitations set forth above, which apply to all required partners of the one-stop system, CAP is further limited by section 121(f)(2), added by a technical amendment to WIA:

"Nothing in this Act shall be construed to require that any entity carrying out a client assistance program authorized under section 112 of the Rehabilitation Act of 1973 (29 USC 732) --

- (A) violate the requirement of section 112(c)(1)(A) of that Act that the entity be independent of any agency which provides treatment, services, or rehabilitation to individuals under that Act; or
- (B) carry out any activity not authorized under section 112 of that Act (including appropriate Federal regulations)."

## State Workforce Investment Board

Section 111(b)(1) of WIA sets forth the membership requirements for the State board. It appears from the language of section 111(b)(1)(C)(vi) that CAP **is** a mandatory member of the State workforce investment board.

## Local Workforce Investment Board

Section 117(b)(2) of WIA specifies the membership of the local workforce investment board. In particular, section 117(b)(2)(A)(vi) of WIA requires that the local board be composed of "representatives of each of the one-stop partners...." Therefore, CAP, as a required one-stop partner under section 121(b)(1)(B) of WIA, **must** be a member of the local workforce investment board.

### Review Questions

**1.4.1**      **Y/N/NA:**      Is CAP represented on the State workforce investment board?

Answer NA only if the State has not yet established a new State Workforce Investment Board or selected to use an alternative entity as provided for in WIA.

**1.4.2**      **Y/N/NA:**      If the State has established any Local Workforce Investment Boards (Local Boards) under WIA, is CAP represented on any local workforce investment board?

Answer NA if the State has not established any Local Boards.

Answer No, if CAP is not represented on ANY Local Board.

Answer Yes, if CAP is represented on ANY Local Board. If Yes, enter the number of Local Boards CAP is represented on below.

\*\*

**1.4.3**      **Y/N/NA:**      Is CAP participating in any one-stop centers established under WIA?

Answer NA if the State has not yet established any one-stop centers under WIA (do not include one-stops under the one-stop grants-- local areas and one-stops may change as WIA is implemented).

If Yes, enter the number of one-stop centers established under WIA in which CAP is participating below.

\*\*

If No, enter the number of one-stop centers established under WIA in which CAP is NOT participating below.

\*\*

**1.4.4**      **Y/N/NA:**      Is CAP providing only those services, as a one-stop partner, that are authorized under section 112 of the Act?

Answer NA if the State has established no one-stop centers under WIA, or if CAP is not participating in any one-stop centers established under WIA.

Answer No if CAP is providing inappropriate services in any one-stop center established under WIA. If NO, enter the number of centers in which CAP is inappropriately participating.

Briefly describe for EACH center the nature of the inappropriate CAP participation.

\*\*

#### **Barriers/Technical Assistance needed**

**1.4.5**      **Y/N/NA:**      Are there any specific areas that appear problematic for the CAP as a one-stop partner? If so, please describe the problem areas.

\*\*

**1.4.6**      **Y/N/NA:**      If problem areas were described in Question 1.4.5 above, describe the barriers preventing compliance.

\*\*

**1.4.7**

**Y/N/NA:**

Describe the specific technical assistance needed in order for the CAP and the other partners to comply with the requirements?

**\*\***



## **2. THE DETERMINATION OF ELIGIBILITY, PARTICULARLY THE PRESUMPTION OF ELIGIBILITY OF INDIVIDUALS RECEIVING SOCIAL SECURITY BENEFITS**

### **ELIGIBILITY/INELIGIBILITY/TRIAL WORK EXPERIENCES**

The 1992 and 1998 Amendments to the Act introduced major changes with respect to the determination of whether or not an individual is eligible for vocational rehabilitation (VR) services. These changes were designed to both facilitate the access of individuals with disabilities, particularly individuals with significant disabilities, to the services of the VR program, and also to reduce process and financial burdens on State VR agencies with respect to the eligibility determination.

In administering an efficient and effective VR program, a State agency should emphasize that the purpose of the program is to assist an eligible individual with a disability to achieve an employment outcome (i.e., obtain, maintain, or regain a job) that is consistent with an individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice. Accordingly, State VR agencies should make clear the purpose of the program in: outreach efforts; marketing initiatives; training; and orientation of referral sources, providers, new VR agency employees, and most importantly, individuals who are either referred to the agency or are seeking VR services on their own.

Section 102 (a)(3) of the Rehabilitation Act Amendments of 1998 introduces the presumption of eligibility for SSI recipients and SSDI beneficiaries while emphasizing that an individual's eligibility is for services leading to an employment outcome. The individual's intent to achieve an employment outcome is not an eligibility criterion. The VR agency may not develop or establish additional assessment standards, steps or processes to determine an individual's eligibility for VR services. However, an agency may include a statement on the application indicating that the purpose of the program is to assist eligible individuals in achieving an employment outcome. For example, such a statement may read as follows: "The purpose of the VR program is to assist an eligible individual with a disability to prepare for, secure, retain or regain employment."

### **2.1 New Statutory Requirement Related to Presumptive Eligibility for SSDI Beneficiaries and SSI Recipients**

#### **Background**

One of the most significant changes introduced into the VR program by the 1998 Amendments is the presumptive eligibility of allowed Social Security Disability Income (SSDI) beneficiaries and Supplemental Security Income (SSI) recipients. The statutory provisions related to the presumptive eligibility of such individuals are found in section 102(a)(3)(ii) of the Act. Within the context of this statutory presumption, SSDI beneficiaries and SSI recipients are presumed to be automatically eligible for VR services. The State VR agency is not to apply any additional tests or steps with respect

to determining the eligibility of such individuals, unless the presumption of benefit from VR services in terms of an employment outcome (that is applicable to all applicants for VR services) can be rebutted by clear and convincing evidence that the individual is incapable of benefiting in terms of achieving an employment outcome due to the severity of the individual's disability.

The purpose behind the presumptive eligibility provision is clearly one of speeding the access of allowed SSDI beneficiaries and SSI recipients to the services of the VR program. This intent is reflected on page 20 of the Senate Committee Report (105-166) where the report says: "Making SSI and SSDI recipients presumptively eligible for vocational rehabilitation services, therefore, will enable designated State agencies to expedite necessary services to such persons without expending time and resources on unnecessary duplicative determinations related to eligibility." The Conference Report (105-659) on page 354 echoes this intent when it says: "The Senate amendment adds new language making individuals who receive SSI or SSDI benefits to be automatically eligible for vocational rehabilitation services."

The provision states that a Social Security disability beneficiary is presumed eligible for vocational rehabilitation services "provided the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual." In speaking to this "intend" provision, the Senate Committee Report says: "By this statement the committee intends to clarify that for SSDI and SSI recipients VR services are provided for purposes of assisting eligible individuals to prepare for, secure, retain, or regain employment. Thus, an SSDI or SSI recipient who applies for VR services from a State VR agency and intends on becoming employed, or retaining or regaining employment, is eligible for VR services." The RSA policy position on the "intend" provision is that State VR agencies are not to introduce or construct other tests of eligibility that would hinder the speedy access of SSDI beneficiaries and SSI recipients to the services of the VR program.

## Review Questions

- |              |             |  |
|--------------|-------------|--|
| <b>2.1.1</b> | <b>Y/N:</b> | Do written agency policies related to eligibility reflect the statutory presumption of automatic eligibility of allowed SSDI beneficiaries and SSI recipients? |
| <b>2.1.2</b> | <b>Y/N:</b> | Have agency staff received training on the presumptive eligibility requirements?   |
| <b>2.1.3</b> | <b>Y/N:</b> | Have agency forms been revised to accommodate the presumptive eligibility of allowed SSDI beneficiaries and SSI recipients?                                    |
| <b>2.1.4</b> | <b>Y/N:</b> | Have agency informational brochures been revised to accommodate  |

the presumptive eligibility of allowed SSDI beneficiaries and SSI recipients?

- 2.1.5**      **Y/N:**      Do the agency's policies reflect that no additional tests or procedures are used to assess "intent" of applicants who are allowed SSDI beneficiaries and SSI recipients that would hinder speedy access to VR services?

**2.2      New Statutory Requirement Related to an Allowed SSDI Beneficiary or SSI Recipient Being Considered as an "Individual with a Significant Disability"**

**Background**

In addition to the statutory provisions related to the presumptive automatic eligibility for VR services of allowed SSDI beneficiaries and SSI recipients, the 1998 Amendments also stipulate that an allowed SSDI beneficiary or SSI recipient is to be automatically considered an individual with a significant disability. This is not a presumption; it is a statutory requirement that such an individual is to be considered an "individual with a significant disability". In discussing this requirement within the context of the presumptive eligibility provision, the Senate Committee Report says: "Although an SSDI or SSI recipient is considered an "individual with a significant disability", presumptive eligibility for vocational rehabilitation services does not entitle the individual to priority for services over other individuals with significant disabilities in a State operating under an order of selection under section 105(A) of the Act."

**Review Questions**

- 2.2.1**      **Y/N:**      Has written agency policy been revised to reflect the statutory requirement that an allowed SSDI beneficiary or SSI recipient is automatically considered to be an "individual with a significant disability"?
- 2.2.2**      **Y/N:**      Have the agency's statistical reporting requirements been revised to reflect the automatic classification of an allowed SSDI beneficiary or SSI recipient as an "individual with a significant disability"?
- 2.2.3**      **Y/N:**      Has the agency's statistical system been reprogrammed to automatically identify an allowed SSDI beneficiary or SSI recipient as an "individual with a significant disability"?

- 2.2.4**      **Y/N:**      Have the agency’s policies on the administration of an order of selection, if one is in effect, been revised to reflect that an allowed SSDI beneficiary or SSI recipient is not afforded any special consideration in establishing the priority categories of the order, notwithstanding the automatic classification of such an individual as an “individual with a significant disability”?
- 2.2.5**      **Y/N:**      Have agency staff received training on the requirement?
- 2.2.6**      **Y/N:**      Have agency forms been revised to accommodate the requirement that an allowed SSDI beneficiary or SSI recipient is automatically considered to be an “individual with a significant disability”?
- 2.2.7**      **Y/N:**      Have agency informational brochures been revised to accommodate the requirement that an allowed SSDI beneficiary or SSI recipient is automatically considered to be an “individual with a significant disability”?

## **2.3      New Statutory Requirements Related to Trial Work Experiences**

### **Background**

Section 102(a)(2)(A) of the Act clarifies that the only basis on which the second element in the definition of the term “individual with a disability”, i.e., the individual can benefit in terms of an employment outcome from VR services, can be rebutted is due to the severity of the individual’s disability.

Prior to the 1998 Amendments, in order to rebut the benefit presumption in the instance of an individual with a severe disability, the designated State unit was required to conduct an “extended evaluation” to determine if clear and convincing evidence existed to support the rebuttal. The 1998 Amendments eliminated the former prescriptive statutory provisions related to “extended evaluation” that were found in the definition of the term “assessment to determine eligibility and vocational rehabilitation needs” and introduced the requirements related to trial work experiences which are found in sections 7(2)(D) and 102(a)(2)(B) of the Act.

When there is doubt about the benefit presumption, the Act now requires the designated State unit to provide the individual trial work experiences of sufficient variety and over a sufficient period of time to determine if the individual is eligible for VR services or that clear and convincing evidence exists to support the rebuttal of the benefit presumption, i.e., the individual is incapable of benefiting in terms of an employment outcome from VR services. The trial work experiences must explore the individual’s abilities, capabilities, and capacity to perform in work situations with appropriate supports and training provided by the designated State unit, except in limited circumstances when the

individual can not take advantage of such experiences.

Although the use of “extended evaluation” is no longer specified, this does not preclude the State unit from using this method in circumstances in which trial work experiences are impossible, or when they have exhausted other options without making the determination. The individual’s abilities, capabilities and capacity to perform in work situations must be periodically assessed during the trial work experiences.

On page 9 of the Senate Committee Report the intent of this new trial work experiences requirement is revealed in the following language: “The committee bill requires the State vocational rehabilitation agencies to explore individual’s abilities to perform in real work situations before concluding that an individual is incapable of benefiting from vocational rehabilitation services. This may be done through trial work experiences including supported employment, on-the-job training, or other experiences using realistic work settings.”

The trial work experiences requirement assures that individuals with significant disabilities have the opportunity to benefit from “real work” experiences as part of the eligibility determination process, and to enhance the likelihood that they will be determined eligible for VR services designed to assist the individual to prepare for, secure, retain, or regain employment.

## **Review Questions**

- |              |             |   |
|--------------|-------------|---|
| <b>2.3.1</b> | <b>Y/N:</b> | Have written agency policies and procedures on assessment been revised to reflect the use of trial work experiences in realistic employment settings to determine if an individual is eligible for VR services or is incapable of benefiting from services in terms of an employment outcome? |
| <b>2.3.2</b> | <b>Y/N:</b> | Have agency staff been trained on the requirements for and the use of trial work experiences in the assessment phase of the rehabilitation process?   |
| <b>2.3.3</b> | <b>Y/N:</b> | Has the agency revised its agreements with service providers to accommodate the requirements for the assessment of the capabilities, capacity and abilities of individuals through trial work experience in realistic employment settings?  |

- 2.3.4 Y/N:** Has the agency redirected programming of its facilities to accommodate the requirements for the assessment of the capabilities, capacity and abilities of individuals through trial work experience in realistic employment settings?

## **2.4 Time Frame for the Eligibility Determination**

### **Background**

Section 102(a)(6) of the Act requires that the eligibility determination be made within 60 days of application for services unless exceptional and unforeseen circumstances beyond the control of the designated State unit exist and the individual and the agency agrees to a specific extension of time, or the designated State unit is exploring the individual's abilities, capabilities, or capacity to work in realistic work settings through trial work experiences.

While the statutory requirements related to the time frame for the eligibility determination are basically the same as those that existed prior to the 1998 Amendments, there is a new statutory provision that relates to the designated State unit and the individual agreeing to a specific extension of time in the instance of exceptional and unforeseen circumstances beyond the control of the designated State unit. While this is a new statutory provision, it is not a new requirement for State VR agencies since the requirement is already in the current regulations at 34 CFR 361.41(b)(1)(I). Thus, VR agencies should already have in place policies and procedures related to this new statutory provision.

### **Review Questions**

- 2.4.1 Y/N:** Do the agency's written policies and procedures related to eligibility determinations identify the time frame for making eligibility determinations?
- 2.4.2 Y/N:** In determining the start time for the 60 day criterion, do the agency's policies and procedures indicate that an individual is considered to have submitted an application in accordance with the provisions of 34 CFR 361.41(b)(2)?
- 2.4.3 Y/N:** Has the agency made application forms widely available throughout the State?
- 2.4.4 Y/N:** Do the agency's policies and procedures related to eligibility determinations specify the conditions for exceptions to the 60 day criterion?

- 2.4.5**      **Y/N:**      Has the agency provided staff training regarding the requirements and conditions for exceptions for the time frame for eligibility determinations?
- 2.4.6**      **Y/N:**      Has the agency been able to make eligibility determinations within 60 days, excluding those instances in which the designated State unit and the individual agree to a specific extension of time due to exceptional and unforeseen circumstances beyond the control of the designated State unit?

## **2.5    Use of Existing Information**

### **Background**

Section 102(a)(4) consolidates all of the pre-1998 Amendments statutory provisions relating to use of existing data and determinations made by other agencies with respect to the designated State unit making eligibility determinations. It also incorporates provisions from the current regulations at 34 CFR 361.42(c); thus, agencies should already have in place the necessary policies and procedures to support the use of existing data and determinations for eligibility determinations.

### **Review Questions**

- 2.5.1**      **Y/N:**      Does the agency have written policies and procedures related to the use of existing data and determinations of other agencies with regard to making eligibility determinations?
- 2.5.2**      **Y/N:**      Has the agency provided training to staff regarding the use of existing data and determinations of other agencies as part of the eligibility determination process?
- 2.5.3**      **Y/N:**      Do the agency's policies indicate that the currency of the existing data is not a function of when the data were produced but whether the data describe the current functioning of the individual?
- 2.5.4**      **Y/N:**      Do the agency's policies make clear that assessments to gather additional data should be authorized only when the existing data are either not current, unavailable, insufficient, or inappropriate to make a determination with respect to the eligibility of the applicant?
- 2.5.5**      **Y/N:**      Do the agency's policies describe the use of assistive technology services and devices in gathering additional assessment information in the event that existing data cannot be used to make a determination with respect to an individual's eligibility for VR

services?

- 2.5.6**      **Y/N:**      Do the agency's policies on assessment place emphasis on worksite assessments in realistic integrated employment settings?

## **2.6 Ineligibility Determinations**

### **Background**

Section 102(a)(5) of the Act consolidates many former statutory requirements related to ineligibility determinations made both prior to the eligibility determination and subsequent to the implementation of the individualized plan for employment. These statutory provisions require that for any ineligibility determination there must be full consultation with the individual; written notification, supplemented as necessary by other appropriate modes of communication chosen by the individual, of the reasons for the determination; and information on how the individual can seek remedy, including appeal to IHO; availability of CAP.

For any ineligibility determination based on the individual not being able to benefit from VR services, the decision must be reviewed within 12 months and annually thereafter if requested by the individual. While these newly consolidated statutory provisions are found in section 102(a)(5), they track the already promulgated regulatory provisions found at 34 CFR 361.43. Thus, State agencies should have already implemented their policies and procedures in compliance with the regulatory requirements.

### **Review Questions**

- 2.6.1**      **Y/N:**      Does the agency have uniform written policies and procedures related to ineligibility determinations made with respect to applicants for services and eligible individuals under an individualized plan for employment?
- 2.6.2**      Do the agency policies with respect to ineligibility determinations specify that:
- 2.6.2.1**      **Y/N:**      Such a determination is made only after providing the individual or the individual's representative the opportunity for full consultation?



<b>2.6.2.2</b>	<b>Y/N:</b>	The individual must be informed in writing, supplemented as necessary by other appropriate modes of communication as selected by the individual, of the ineligibility determination?
<b>2.6.2.3</b>	<b>Y/N:</b>	The written notification to the individual must identify the reasons for the ineligibility determination?
<b>2.6.2.4</b>	<b>Y/N:</b>	The written notification to the individual must identify the means by which the individual can appeal the ineligibility determination, including mediation and the review by an impartial hearing officer, consistent with the agency's due process procedures?
<b>2.6.2.5</b>	<b>Y/N:</b>	The written notification to the individual must provide the individual with a description of the client assistance program?
<b>2.6.2.6</b>	<b>Y/N:</b>	The written notification to the individual must provide the individual with information on how to contact the client assistance program?
<b>2.6.3</b>		Do the agency policies make it clear that if the reason for the determination of ineligibility is that the individual is not capable of achieving an employment outcome:
<b>2.6.3.1</b>	<b>Y/N:</b>	The determination is reviewed within 12 months and annually thereafter if requested by the individual or the individual's representative?
<b>2.6.3.2</b>		The review need not be conducted if the:
<b>2.6.3.2.1</b>	<b>Y/N:</b>	individual has refused it?
<b>2.6.3.2.2</b>	<b>Y/N:</b>	individual is no longer present in the State?
<b>2.6.3.2.3</b>	<b>Y/N:</b>	individual's whereabouts are unknown?
<b>2.6.3.2.4</b>	<b>Y/N:</b>	individual's medical condition is rapidly progressive or terminal?

**2.6.4**      **Y/N:**      Has the agency provided staff training regarding ineligibility determinations?

### **3. DEVELOPMENT OF THE INDIVIDUALIZED PLAN FOR EMPLOYMENT**

The House bill introduced the term individualized plan for employment (IPE) and enhanced the control of participants by requiring that participants have the opportunity to exercise informed choice in the development and implementation of their plans by selecting employment goals, services, providers, and methods to procure services, as well as providing for extended services. The Senate amendment established mandatory procedures and components for individual plans.

The Conference agreement adopted the Senate amendment and the House term of IPE. The Conference agreement reflects the need to provide greater choice and involvement of vocational rehabilitation participants in developing their service plans. The Conferees expect that these changes will fundamentally change the counselor's relationship with the individual, and that in many cases, counselors will serve more as facilitators of plan development.

#### **Background**

The 1998 amendments changed the requirements related to developing the IPE in the following ways:

- A. State plan requirements related to the IPE were modified by adopting previous regulatory requirements:
  - assuring that an individual's IPE will be "developed and implemented in a timely manner" subsequent to the determination of eligibility; and
  - clarifying that, in States operating under an order of selection, the IPE will be developed and implemented only for individuals meeting the order of selection criteria of the State.
- B. Requirements for developing the IPE were changed from joint development by the individual or the individual's representative and the VR counselor or coordinator to options for the individual developing all or part of the IPE independently, with the assistance of a qualified VR counselor, or with technical assistance from another source.
- C. New requirements were established that require the agency to provide the eligible individual or the individual's representative with information, in writing and in an appropriate mode of communication, on the individual's options for developing an IPE.

This information should include:

- the availability of assistance from a qualified VR counselor and the availability of technical assistance from other sources in developing all or part of the IPE;
- a description of all the components of the IPE;
- an explanation of agency guidelines and criteria associated with financial commitments for the IPE, if appropriate;
- any additional information requested by the individual or deemed necessary by the State; and
- the availability of assistance in completing State agency IPE forms. The extent of appropriate assistance should be determined by the eligible individual.

- D. New requirements clarify that the IPE shall be a written document prepared on forms provided by the State VR agency.
- E. Previous requirements that the IPE be agreed to and signed by the individual, or the individual's representative, and the VR counselor were changed to require that the IPE be signed and agreed to by the individual or the individual's representative and "approved and signed" by a qualified VR counselor employed by the State VR agency.

## Review Questions

The following questions can be used by the State VR agency or by federal reviewers for determining the extent to which State VR agencies are meeting new requirements related to development of the IPE and for identifying technical assistance needs and resources.

- |            |                |   |
|------------|----------------|---|
| <b>3.1</b> | <b>Y/N:</b>    | Are eligible individuals being informed about their options for developing an IPE, including the option that the individual may develop the IPE on agency forms without assistance from anyone? |
| <b>3.2</b> | <b>Y/N:</b>    | Does the information on developing an IPE include all of the required content?  |
| <b>3.3</b> | <b>Y/N:</b>    | Have sources of technical assistance, external to the agency, that can assist individuals in developing the IPE been identified?  |
| <b>3.4</b> | <b>Y/N/NA:</b> | Have any activities to support the implementation of these requirements been initiated, such as providing training and guidance   |

for VR counselors and consumers or developing ways to help the individual to determine his or her needs for assistance in developing the IPE?

**3.5**            **Y/N/NA:**    Are there barriers or problems with implementing the requirements or initiating supporting activities?

If Yes, briefly describe.

\*\*

**3.6**            **Y/N/NA:**    Are there technical assistance needs or other Federal assistance strategies that would be helpful to the agency in implementing the requirements or supporting activities?

If Yes, briefly describe.

\*\*

**3.7**            **Y/N/NA:**    Has the agency developed any notable practices or a revised IPE form that would be useful to share with others? If Yes, briefly describe.

\*\*

## **TECHNICAL ASSISTANCE RESOURCES**

**Arkansas Commitment to Client Choice Project:** “Consumer connectors” trained by the project assisted individuals in career planning and selecting providers. Person-centered planning was also a critical component of project design and implementation.

**The Development Team, Inc. Career Choice Project:** Participants were members of facilitated peer groups that were responsible for developing plans and making service fund allocation decisions. In addition to group work, individuals did homework, using career choice and plan development materials produced by the project. The completed worksheets comprised the person's plan and documented the individual's participation in the planning process.

**United Cerebral Palsy Associations Choice Access Project:** Employment advisors assisted individuals in planning and implementation of the plan. This was most successful when the advisor was knowledgeable of the rehabilitation services system, had a disability, and had gone through the system themselves.

**Vermont Consumer Choice Project:** An important component of this project was the continuing assessment of the participant's abilities to gather information and make decisions. The participant and the counselor continually determined those tasks the participant could perform independently, those for which the participant needed assistance or support, and those which needed to be done by someone else. Forms for the counselor and the participant to use in this assessment process are available from the project.

**Washington Participant Empowerment Project:** Use of the rehabilitation team was a key method developed by this project. Participants were trained to lead their team. The team helped complete an assessment and profile of the individual's needs; helped identify past accomplishments and present strengths and skills of the individual; and provided information and support in the process of developing individual's employment goal and selecting the goods and services needed to implement the plan.

***Promising Practices in the Choice Demonstration Projects: An Operations Manual:*** The manual provides more detailed information about many of these methods and projects. See section 10 of the Guide on "Informed Choice" for further information and how to order copies.

**State VR agencies** may be using a variety of planning processes, such as planning teams, person-centered planning, peer groups, various consumer training activities, and other methods of assisting individuals in gathering information and deciding among various options that result in the individual's plan.

## **OTHER CONSIDERATIONS**

The process of developing the plan and selecting the goals, services, providers, and procurement methods is separate from the process of filling out the IPE form. The requirement that individuals exercise informed choice during the assessment process is also related to the process of gathering the information needed to develop the IPE.

The options for developing the IPE are not mutually exclusive. An individual can choose to work collaboratively with both the VR counselor and a technical assistance resource from outside the agency. The individual can also use other people important in his or her life to help develop the plan. Expanding the counselor and individual's relationship to include other people allows for multiple sources of feedback to the participant about his or her skills, abilities, and choices and may generate additional ideas and resources.

The individual, or the individual's representative, determines the extent of assistance needed to

develop all or parts of the IPE. However, the individual, or his or her representative, may choose to involve the counselor and/or others in making this determination. The extent of needed assistance can be determined by considering factors such as those related to the individual's or representative's:

1. knowledge and understanding of the VR process, including previous VR experiences;
2. experience and skills in career planning;
3. ability to work independently using available career planning and IPE development materials;
4. knowledge of community resources; and
5. abilities and experience in gathering information and making decisions.

## 4. MEDIATION AND DUE PROCESS PROCEDURES

### Background

#### DUE PROCESS

**Note:** The 1998 Amendments to the Act include significant changes that strengthen the due process provisions. All Due Process requirements are set forth in section 102(c) of the Act. The new requirements are set forth primarily in sections 102(c)(1) through (5).

- Sections 102(c)(1)(3) and (7) provide the general requirements that apply to both the mediation and impartial due process hearing procedures.
- Section 102(c)(4) sets forth the specific requirements for the mediation procedures.
- Section 102(c)(5) sets forth the specific requirements for the impartial due process hearing procedures.
- Sections 102(c)(6) through (8) are carried over from the Act, as amended in 1992. These provisions govern the Hearing Board, impact on the provision of services, and information collection and report.

#### A. General Requirements

1. Establishment of Procedures: The State **must** establish procedures for reviewing determinations, made by DSU personnel, that affect the provision of VR services to applicants and eligible individuals. These procedures must include procedures for:

- a. mediation, **and**
- b. review through an impartial due process hearing

These procedures must satisfy all of the requirements of this section (as set forth below). (Section 102(c)(1)).

(Note: Determinations made by *any* DSU personnel that affect the provision of VR services in dispute may be appealed. There is no longer a requirement that the determination be made by the counselor or coordinator.)

2. Informal Dispute Resolution Procedures: There is nothing in the Act that precludes the parties from attempting to resolve the dispute in an informal manner *before* engaging in mediation or the formal hearing process. The



only caveat provided by the Act is that the informal process **cannot** be used to:

- a. deny or delay the applicant or eligible individual's right to pursue mediation or the formal hearing process; or
  - b. deny any other right afforded to the applicant or eligible individual under Title I of the Act. (Section 102(c)(4)(H)).
- 3. Notice Requirements: Applicants/eligible individuals or, as appropriate, their representatives, must be notified of:
  - a. the right to a formal hearing;
  - b. the right to pursue mediation; and
  - c. the availability of the CAP.

This notice must be given:

- a. at the time of application;
  - b. when the IPE is developed; and
  - c. when services are being reduced, suspended or terminated. (Section 102(c)(2)).
- 4. Evidence: Applicants and eligible individuals or, as appropriate, their representatives, have the right to submit evidence and information that supports their position during the mediation and impartial hearing process. (Section 102(c)(3)(A)).
- 5. Representation: Applicants and eligible individuals have the right to be represented during the mediation sessions and impartial hearing process by any person selected by the applicant or eligible individual. (Section 102(c)(3)(B)).
- 6. Impact on Services: The DSU shall not reduce, suspend or terminate services being provided to the individual (including evaluation and assessment services and plan development) pending a decision by a mediator, hearing officer or reviewing official unless:
  - a. the individual, or the individual's representative, requests it; **or**

- b.** the services at issue were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative. (Section 102(c)(7)).

## B. Mediation Requirements

1. **Mediation Availability:** The mediation procedures must be available, at a minimum, when a formal hearing has been requested. (Section 102(c)(4)(A)).
2. **Mediation Process:** Mediation must be:
  - a. voluntary on the part of both parties;
  - b. not used to deny or delay an applicant or eligible individual's right to a formal hearing; and
  - c. conducted by qualified **and** impartial mediators who are trained in effective mediation techniques. (Section 102(c)(4)(B)).
3. **List of Mediators:** These qualified and impartial mediators must be chosen from a list, maintained by the State, of individuals who are qualified mediators and who are knowledgeable in laws and regulations governing the provision of Title I VR services. (Section 102(c)(4)(C)).
4. **Cost of Mediation:** The State shall pay for the mediation process. (Section 102(c)(4)(D)).
5. **Scheduling of Mediation:** Mediation must be scheduled:
  - a. in a timely manner; and
  - b. in a location that is convenient to the parties of the dispute. (Section 102(c)(4)(E)).
6. **Written Agreements:** If an agreement is reached during the mediation process, the parties must put the agreement in writing. (Section 102(c)(4)(F)).
7. **Confidentiality during Mediation:** All discussions that occur during the mediation process must be kept confidential. Neither party can use any of the discussions that occur during the mediation process as evidence during any subsequent due process hearing or civil proceeding. The parties may be required to sign a "confidentiality pledge" before the mediation process begins. (Section 102(c)(4)(G)).

(Note: This does not exclude either party from entering the written agreement, reached by the parties during the mediation process, as evidence in a subsequent due process hearing or civil proceeding. However, it does exclude either party from entering discussions of "settlement offers" (not included in the written agreement) as evidence in subsequent due process hearings or civil proceedings.

## **C. Due Process Hearings**

1. Hearing Process: The due process hearing must be conducted by an impartial hearing officer (IHO). The IHO must:
  - a. issue a **written** decision based on the provisions of the approved State plan, the Act and its implementing regulations, and State regulations and policies that are consistent with the Federal requirements set forth in Title I of the Act;
  - b. issue the written decision to the applicant or eligible individual, or, as appropriate, the applicant or eligible individual's representative, and to the DSU. (Section 102(c)(5)(A)).
2. IHO Selection: The IHO must be selected from a list, maintained by the State, of qualified IHOs who are knowledgeable of the laws and regulations governing the provision of Title I VR services. The names of the IHOs on the list must be identified **jointly** by:
  - a. the DSU **and**
  - b. members of the State Rehabilitation Council or the commission, if appropriate, as described in section 101(a)(21) of the Act.

The IHO for a particular hearing shall be selected either:

- a. on a random basis; **or**
- b. by agreement between:
  - i. the DSU director; and
  - ii. the applicant or eligible individual; or
  - iii. the applicant or eligible individual's representative. (Sections 102(c)(5)(B) and (C)).

#### **D. Review of IHO Decisions**

1. The State **may** establish procedures for the impartial review of an IHO decision. (Section 102(c)(5)(D)).
2. Review Requirements: If the State chooses to establish procedures for the review of IHO decisions, the following requirements must be met:
  - a. the review must be conducted by:
    - i. the chief official of the designated State agency (DSA) if the State has both a DSA and a DSU; **or**
    - ii. an official from the Governor's office.
  - b. either party may request the review; and
  - c. the request must be made within 20 days after the IHO decision. (Sections 102(c)(5)(D) and (E)).
3. The Review Process: The reviewing official must:
  - a. provide the opportunity for either party to submit additional evidence and information relevant to the final decision under review;
  - b. not overturn or modify an IHO decision, or part of the decision, that supports the position of the applicant or eligible individual **unless** the reviewing official concludes, based on clear and convincing evidence, that the IHO decision is clearly erroneous on the basis of being contrary to the approved State plan, the Act and its implementing regulations, or any State regulation or policy that is consistent with the Federal requirements set forth in Title I of the Act;
  - c. make a final decision in writing and in a timely manner. The decision must include a full report of the findings and grounds for such decision;

- d. issue the final written decision to the applicant or eligible individual, or, as appropriate, the applicant or eligible individual's representative, and to the DSU; and
- e. not delegate the responsibility for making the final decision to any officer or employee of the designated State unit. (section 102(c)(5)(F)).

**E. Finality of Decisions and Implementation of Decisions**

- 1. IHO's Final Decision: The IHO decision shall be final unless one of the parties requests an impartial review of the IHO decision (if the State has such a procedure) or files a civil action. (section 102(c)(5)(G)).
- 2. Reviewing Official's Final Decision: If the State has elected to establish procedures for the impartial review of IHO decisions and if a party has made such a request, the decision issued by the reviewing official shall be final unless one of the parties files a civil action. (section 102(c)(5)(H)).
- 3. Implementation of Final Decision: The final decision issued by the IHO or the reviewing official, if the State has established such review procedures, shall be implemented regardless of whether a party has filed a civil action in the matter. That final decision will be implemented pending the outcome of the civil action. (section 102(c)(5)(I)).

**F. Civil Action**

- 1. Filing a Civil Action: Either party may file a civil action for review of the final decision issued by the IHO or the reviewing official (if the State has such a review procedure). (section 102(c)(5)(J)(I)).
- 2. Where to File the Civil Action: The Civil Action may be filed in any State court of competent jurisdiction or in a Federal district court. (section 102(c)(5)(J)(I)).
- 3. Civil Action Procedures: The court shall:
  - a. receive/review all records related to the IHO hearing and the impartial review of the IHO decision process (if the State has established such a procedure);
  - b. hear additional evidence if either party requests;

- c. render a decision based on the preponderance of the evidence; and
- d. grant such relief as the court determines appropriate.  
(section 102(c)(5)(J)(ii)).

**G. Fair Hearing Board**

- 1. If a State has a fair hearing board, which was established before January 1, 1985, and is authorized to review determinations under the Act, the State fair hearing board is authorized to carry out the responsibilities of the IHO set forth in the Act.
- 2. If such a fair hearing board exists and carries out the responsibilities of the IHO, all of the provisions related to the IHO hearing process and the review of the IHO decision by an impartial reviewing official in section 102(c) do not apply. However, all of the provisions related to mediation and civil actions still apply.

**H. Information Collection and Report**

- 1. The DSU director shall collect information, as required in the Act, and submit to RSA an annual report containing such information. The information include:
  - a. a copy of the standards used by the State reviewing official for reviewing decisions made by IHOs;
  - b. information on the number of hearings and reviews sought from the IHOs and State reviewing officials, including the type of complaints and issues involved;
  - c. information on the number of IHO decisions made that were not reviewed by the State reviewing officials;
  - d. information on the number of the IHO decisions that were reviewed by the State reviewing officials, and, based on the reviews the number of hearing decisions that were sustained/reversed in favor of the individual and that were sustained/reversed in favor of the DSU.  
(section 102(c)(8)(A) and (B)).
- 2. The Commissioner shall have access to records, maintained by the DSU, of applicants and eligible individuals for the purposes of collecting the information required above in order to prepare the RSA annual report.

(section 102(c)(8)(A) and (C)).

3. The DSU director must send copies of all reports, issued by the IHOs and reviewing officials, to the Commissioner.

## **Review Questions**

### **4.1 General questions**

- |              |             |   |
|--------------|-------------|---|
| <b>4.1.1</b> | <b>Y/N:</b> | Has the VR agency established procedures for mediation <b>and</b> a formal hearing process?       |
| <b>4.1.2</b> | <b>Y/N:</b> | Does the VR agency provide the individual with notice of these procedures as required by the Act? |
| <b>4.1.3</b> | <b>Y/N:</b> | Does the agency offer an informal resolution process?   |

### **4.2 Mediation**

- |              |             |   |
|--------------|-------------|---|
| <b>4.2.1</b> | <b>Y/N:</b> | Is the mediation process voluntary?                     |
| <b>4.2.2</b> | <b>Y/N:</b> | Is mediation used to deny/delay the hearing process?    |
| <b>4.2.3</b> | <b>Y/N:</b> | Are the mediators qualified <b>and</b> impartial?       |
| <b>4.2.4</b> | <b>Y/N:</b> | Is the State bearing the cost of mediation?             |
| <b>4.2.5</b> | <b>Y/N:</b> | Are agreements, reached during mediation, in writing?   |
| <b>4.2.6</b> | <b>Y/N:</b> | Are parties told about the confidentiality requirement? |
| <b>4.2.7</b> | <b>Y/N:</b> | Is mediation done in a timely manner?                   |

### **4.3 Formal Hearing Process**

- |              |             |  |
|--------------|-------------|--|
| <b>4.3.1</b> | <b>Y/N:</b> | Is the agency allowing the individual's representative to assist in the choosing of the IHO for a hearing?                                   |
| <b>4.3.2</b> | <b>Y/N:</b> | Are the hearings conducted in a timely manner?   |
| <b>4.3.3</b> | <b>Y/N:</b> | Are the IHOs basing decisions on Federal law/regulations and those State laws/regulations and policies that are consistent with Federal law? |

**4.3.4**        **Y/N:**        If the IHO decision is the last level of the administrative review process, are the IHO decisions being implemented pending the outcome of any civil action?

#### **4.4    Review of IHO Decisions**

**4.4.1**        **Y/N:**        Has the State implemented a process for reviewing IHO decisions? (This is optional.)

**4.4.2**        If so, who is the reviewing official?

**\*\***

**4.4.3**        What are the standards for review used by the reviewing official?

**\*\***

**4.4.4**        **Y/N:**        Is the reviewing official overturning/modifying decisions, which favor the individual, appropriately?

**4.4.5**        **Y/N:**        Is the reviewing official's final decision implemented?

#### **4.5    Civil Action**

**4.5.1**        **Y/N:**        Does the State have procedures that enable either party to a dispute to file a civil action? (Note: These procedures generally are set forth in the "judicial review" process of the State's Administrative Procedures Act and/or are set forth in the State's Rules of Civil Procedures.)

#### **4.6    Reports**

**4.6.1**        **Y/N:**        Does the VR agency send all reports issued by the IHOs and reviewing officials to the RSA Commissioner?



#### **4.7 Barriers/TA Needed**

**4.7.1**            **Y/N:**            Are there any specific areas that appear problematic for the agency?

**4.7.2**                            If so, describe the barriers preventing compliance?

**\*\***

**4.7.3**                            Describe the TA that is necessary for the agency to comply with the requirements?

**\*\***

## **5. COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT**

In the House of Representatives Committee on Labor and Human Resources report (102-822) on reauthorizing the Rehabilitation Act in 1992, the Committee states its belief that the Comprehensive System of Personnel Development (CSPD) provisions were among the most important included in the bill. The report states that "trained, qualified personnel make the difference between success and failure in facilitating the achievement of an employment outcome for a client."

Senate Report 105-166 also emphasized the importance of the CSPD, noting that the need for qualified VR counselors and other staff to meet standards that are consistent with national or State certification, licensure, or registration requirements is a critical aspect of the CSPD.

During the past 20 years, there has been a growing expectation among members of the vocational rehabilitation profession, employees and regulatory bodies that rehabilitation counselors who provide services to individuals with disabilities have the appropriate pre-service education and credentials. RSA is promoting the employment of well-trained and educated personnel in the VR program in order to maximize the effectiveness of the services provided and to improve the achievement of employment outcomes for individuals with disabilities. During FY 1999, RSA will continue to monitor the CSPD requirements for all rehabilitation personnel employed by the designated State unit (DSU) with a special emphasis on the VR counselor. RSA is assessing each State VR agency's FY 1999 implementation of the CSPD requirements and the need for technical assistance.

### **Background**

Prior to the beginning of each State plan cycle, RSA approves each State VR agency's State plan including assurances that it has implemented a Comprehensive System of Personnel Development meeting the requirements of 34 CFR 361.18. State plan attachment 4.11(b), describing the State's procedures and activities to ensure an adequate supply of qualified professionals and paraprofessionals for the DSU, is reviewed in preparation for the periodic on-site review.

### **Review Questions**

#### **5.1 Data System**

**5.1.1 Y/N:** Does the State agency maintain a data system that includes the type of data listed below?

**5.1.2** Does the State agency data system list the number of personnel:

- 5.1.2.1 Y/N: by type of position?
- 5.1.2.2 Y/N: as a ratio to clients served?
- 5.1.2.3 Y/N: as the number presently needed? (i.e., unmet need) to serve clients?
- 5.1.2.4 enter number of rehabilitation counselors needed:  
\*\*
- 5.1.2.5 Y/N: projected as needed (i.e., unmet need) for the next five years?
- 5.1.2.6 enter number of rehabilitation counselors needed:  
\*\*
- 5.1.3 Does the State agency data system list:
- 5.1.3.1 Y/N: colleges/universities that train needed staff?
- 5.1.3.2 Y/N: number of students graduating from those institutions? if Yes, how many?  
\*\*
- 5.1.3.3 Y/N: number of rehabilitation counselors per year? if Yes, how many?  
\*\*
- 5.1.4 Comment upon the strengths and weaknesses of the DATA SYSTEM, whether or not it is particularly effective and worthy of replication elsewhere, and/or suggestions on how it might be improved.  
\*\*

## 5.2 Recruitment and Retention

- 5.2.1 Y/N: Does the State agency have a system to recruit and retain qualified staff?

**5.2.2** Does the system include efforts to recruit, prepare and retain personnel:

**5.2.2.1** **Y/N:** from minority backgrounds?

**5.2.2.2** **Y/N:** who are individuals with disabilities?

**5.2.3** Comment upon the strengths and weaknesses of the RECRUITMENT AND RETENTION SYSTEM, whether or not it is particularly effective and worthy of replication elsewhere, and/or suggestions on how it might be improved.

\*\*

### **5.3 Personnel Standards**

**5.3.1** **Y/N:** Does the State agency specify personnel standards for counselors that are based on the highest entry-level degree requirements in the State, or the National Standard?

**5.3.2** **Y/N:** Does the State agency analyze the extent to which its counselors do not meet the highest requirements in the State?

**5.3.3** **Y/N:** Does the State agency identify and analyze factors (such as shortages of qualified personnel, low pay scales, etc.) that may inhibit its ability to hire qualified staff or re-train current staff?

**5.3.4** **Y/N:** If yes, does the State agency identify short-term and long-term strategies (including clear time lines) for addressing these factors?

**5.3.5** **Y/N:** Does the State agency identify planned objectives and activities for getting all of its counselors to the level of the standard?

**5.3.6** **Y/N:** If yes, do these objectives and activities move the State effectively toward compliance with the CSPD requirements?

**5.3.7** **Y/N:** Will they result in counselors meeting the necessary standard in a timely fashion?

**5.3.8** **Y/N:** Does the State agency commit funds to support the CSPD?

**5.3.9 Y/N:** If yes, and an amount is indicated, how much?

\*\*

**5.3.10 Y/N:** Does the State agency include an evaluation mechanism for determining whether the objectives of the CSPD are being met?

\*\*

**5.3.11 Y/N:** Is the CSPD non-discriminatory so as to encourage retraining and hiring of staff from minority backgrounds and staff with disabilities?

**5.3.12** What is the standard for Counselors? **(Place an X)**  
( )BA ( )MA ( )Mixed BA/MA ( )Other ( )Not reported

		BA	MA	Mixed BA/ MA	Other	Not Reported
For Counselors,						

**5.3.13** How many meet the standard? \_\_\_\_\_

**5.3.14** How many don't meet the standard? \_\_\_\_\_

**5.3.15** Comment upon the strengths and weaknesses of the PERSONNEL STANDARDS and associated procedures, whether or not they are particularly effective and worthy of replication elsewhere, and/or suggestions on how they might be improved.

\*\*

## **5.4 Staff Development**

**5.4.1 Y/N:** Does the State agency have a system for providing adequate and ongoing training?

**5.4.2 Y/N:** Is there an indication that the system was based on a needs assessment?

**5.4.3** If yes, comment on the strengths and weakness?

\*\*

**5.4.4** If no, how were decisions made?

\*\*

**5.4.5** Does the system specifically indicate training in any of the following areas (the regulations **emphasize** but do not require these areas)?

**5.4.5.1** Y/N: Assistive Technology

**5.4.5.2** Y/N: Current Research

**5.4.5.3** Y/N: Laws and Regulations

**5.4.5.4** Y/N: Informed Choice

**5.4.5.5** Y/N: Culturally Diverse Populations

**5.4.6** Comment upon the strengths and weaknesses of the STAFF DEVELOPMENT SYSTEM, whether or not it is particularly effective and worthy of replication elsewhere, and/or suggestions on how it might be improved.

\*\*

## **5.5 Communication with Diverse Populations**

**5.5.1** Does the State agency system address the availability of staff, or obtaining necessary services, to communicate with clients:

**5.5.1.1** Y/N: in their native language?

**5.5.1.2** Y/N: in Braille?

**5.5.1.3** Y/N: in sign language?

**5.5.2** Comment upon the strengths and weaknesses of the system to address the availability of staff to COMMUNICATE WITH DIVERSE POPULATIONS, whether or not it is particularly effective and worthy of replication elsewhere, and/or suggestions on how it might be improved.

\*\*

## **5.6 Coordination of the CSPD and In Service Training**

- 5.6.1**      **Y/N:**      Does the State agency's system coordinate with the CSPD under IDEA?
- 5.6.2**           Comment upon the strengths/weaknesses and provide suggestions/recommendations:
- \*\*
- 5.6.3**      **Y/N:**      Does the system directly link the IN SERVICE training grant of the State agency, and IN SERVICE training funds, with the various components of the CSPD?
- 5.6.4**           Comment upon the strengths and weaknesses of the State agency's coordination of the CSPD and IN SERVICE training, whether or not it is particularly effective and worthy of replication elsewhere, and/or suggestions on how it might be improved.
- \*\*
- 5.7      State Rehabilitation Council**
- 5.7.1**      **Y/N:**      Has the State Rehabilitation Council had an opportunity to review and comment upon the development of the CSPD and related policies and procedures?
- 5.7.2**           Describe the Council's input:
- \*\*
- 5.7.3**           Summary of CSPD review, including TA needs and/or particularly effective practices:

## **6. SELECTED FISCAL PROVISIONS**

The 1998 amendments to the Rehabilitation Act introduced the element of flexibility in the procurement of goods and services for consumers and modified the requirements for the use of earmarked funds. RSA has identified these two areas, as well as the generation and use of program income, as priority areas for review during FY 1999.

The following guidance is designed to assist State VR agency financial personnel in conducting a self-assessment in these important areas. The responses to these questions should help the agency in determining its need for any technical assistance in the areas reviewed.

### **Review Questions**

#### **6.1 Procurement**

- 6.1.1 Y/N:** Are the policies and procedures for the procurement of goods and services for consumers different from those for the purchase of goods and services for State agency use?
- 6.1.2 Y/N:** If the answer to Question 6.1.1 is yes, how do they vary from those required for the purchase of goods and services for State agency use? Provide details. (Some State agencies are bound by Statewide rules and procedures for the purchase of goods/services for State agency use but are exempt from those requirements when it comes to purchasing goods/ services for consumers.)
- \*\*
- 6.1.3** What are the policies and procedures for the procurement of goods and services for consumers?
- \*\*
- Obtain details and documentation.
- 6.1.4 Y/N:** Do they vary by type of purchase (e.g., purchases of information technology may entail a different set of policies and procedures)?



- 6.1.5** Provide the details for each type as to what is involved and the number/level of reviews/approvals required.
- \*\*
- 6.1.6**      **Y/N:**      Do they vary by dollar amount (e.g., purchases of goods exceeding \$2,000 may require bids)?
- 6.1.7** Provide the details for each threshold as to what is involved and the number/level of reviews/approvals required.
- \*\*
- 6.1.8**      **Y/N:**      Do the purchases of consumer goods/services require the clearance/approval or other involvement of offices/units outside the control of the State VR agency?
- 6.1.9**      **Y/N:**      If yes, identify the offices/ units and the nature of their involvement by the type of purchase and/ or dollar threshold.
- \*\*
- 6.1.10 Y/N:**      Are there any bottlenecks in the process of procuring goods/services for consumers?
- 6.1.11**      If so, provide the specifics (who, what, when, where, how).
- \*\*
- 6.1.12**      What should be done to streamline the process? (Examples of possible changes: dollar threshold for requiring bids needs to be raised; the number of sign-offs needs to be reduced ....)
- \*\*
- 6.1.13 Y/N:**      Is the purchasing system flexible enough to allow for special procedures and arrangements for a consumer's special needs?
- 6.1.14**      If yes, identify the flexibility afforded.
- \*\*

**6.1.15** If no, what flexibility is needed?

**\*\***

## **6.2 Matching and Earmarking**

### **Earmarking (Basic Support only)**

- 6.2.1 Y/N:** If the State unit received a contribution earmarked for a particular geographic area, were the funds used to meet the non-Federal share of the cost of the vocational rehabilitation services involved made available by a local agency (including funds contributed to the local agency by a private agency, organization or individual)?
- 6.2.2 Y/N/NA:** If yes, did the State unit request and the Secretary approve a waiver of State-wideness?
- 6.2.3 Y/N:** If the State unit received a contribution directly from a private agency, organization or individual which was earmarked for the cost of vocational rehabilitation services in particular geographic areas of the State, did the State unit notify the Secretary that it could not provide the full non-Federal share without the use of such private contributions?
- 6.2.4 Y/N/NA:** If no, did the State unit request and the Secretary approve a waiver of State-wideness?

## **6.3 Program Income**

- 6.3.1 Y/N:** Does the grantee know of the option of the two year period for expending program income even if it does not carryover any grant funds?
- 6.3.2** Based on the most recent Social Security "Allowance Rate Report," what percentage of the submitted SSA claims were allowed by SSA?
- \*\***
- 6.3.3 Y/N:** Is the success rate of claims submitted versus claims allowed abnormally low?
- 6.3.4** If yes, what actions are being taken by the State agency to improve the situation?

\*\*

**6.3.5**      **Y/N:**      Are there significant variations in the amount of SSA reimbursements reported on the Financial Status Reports versus that shown on the "Allowance Rate Report"?

**6.3.6**      If yes, explain the variance.

\*\*

**OTHER TECHNICAL  
ASSISTANCE MODULES**

## **7. DESIGNATED STATE AGENCY AND DESIGNATED STATE UNIT REQUIREMENTS**

### **DESIGNATED STATE VOCATIONAL REHABILITATION UNIT**

This survey instrument tests for compliance with the Federal requirements related to the designated State unit that is responsible for the administration of the vocational rehabilitation (VR) program of the designated State VR agency.

Statutory requirements for the designated State unit are found in section 101(a)(2)(B) of the Rehabilitation Act of 1973, as amended. Such an unit is required when the State designates as the State agency responsible for the administration of the VR program an agency that is not primarily concerned with VR, or VR and other rehabilitation of individuals with disabilities.

Section 101(a)(2)(B) spells out specific requirements for the designated State unit. These provisions require that the unit must:

- be primarily concerned with VR, or vocational and other rehabilitation, of individuals with disabilities;
- be responsible for the VR program of the designated State agency;
- have a full-time director;
- have staff all or substantially all of whom are employed full time on the rehabilitation work of the unit; and
- be located at an organizational level and have organizational status within the designated State agency comparable to that of other major organizational units of the designated State VR agency.

The Federal regulations implementing these statutory requirements are found in 34 CFR 361.13(b). The regulatory provisions track the statutory requirements and also specify that at least 90 percent of the designated State unit's staff must be employed full time on the rehabilitation work of the organizational unit.

The regulations at 34 CFR 361.13(c) also require that the following functions are reserved solely to the designated State unit and may not be delegated to any other agency or individual:

- Decisions regarding eligibility determinations; the nature and scope of available VR services to be provided; and provision of VR services;
- Determination that an individual has achieved an employment outcome;

- Policy formulation and implementation; and
- Allocation and expenditure of VR funds.

## Review Questions

<b>7.1</b>	<b>Y/N:</b>	Is the work of the designated State unit primarily concerned with vocational rehabilitation, or vocational and other rehabilitation of individuals with disabilities?
<b>7.2</b>	<b>Y/N:</b>	Does the director of the designated State unit have an adequate level of authority and responsibility to direct and administer the designated State agency's VR program?
<b>7.3</b>		Does the designated State unit have clear, direct, and sole responsibility for all decisions affecting:
<b>7.3.1</b>	<b>Y/N:</b>	eligibility of individuals applying for VR services?
<b>7.3.2</b>	<b>Y/N:</b>	nature and scope of VR services to be provided to individuals with disabilities?
<b>7.3.3</b>	<b>Y/N:</b>	provision of services to individuals with disabilities?
<b>7.3.4</b>	<b>Y/N:</b>	determination that an individual has achieved an employment outcome?
<b>7.3.5</b>	<b>Y/N:</b>	policy formulation and implementation? and
<b>7.3.6</b>	<b>Y/N:</b>	allocation and expenditure of VR funds?
<b>7.4</b>		Does the director of the designated State unit have adequate input with respect to the designated State agency's VR program regarding:
<b>7.4.1</b>	<b>Y/N:</b>	legislative proposals?
<b>7.4.2</b>	<b>Y/N:</b>	regulations?
<b>7.4.3</b>	<b>Y/N:</b>	budget development?
<b>7.4.4</b>	<b>Y/N:</b>	program planning?

<b>7.4.5</b>	<b>Y/N:</b>	program evaluation?
<b>7.4.6</b>	<b>Y/N:</b>	personnel management?
<b>7.4.7</b>	<b>Y/N:</b>	management information systems?
<b>7.4.8</b>	<b>Y/N:</b>	fiscal and statistical reporting?
<b>7.5</b>	<b>Y/N:</b>	Does the designated State unit receive adequate and timely support from the designated State agency with respect to administrative functions centralized at the designated State agency level?
<b>7.6</b>		If VR funds are utilized to support administrative functions at the designated State agency level:
<b>7.6.1</b>	<b>Y/N/NA:</b>	is there an approved cost allocation plan?
		or
<b>7.6.2</b>	<b>Y/N/NA:</b>	are direct charges reasonable?
<b>7.7</b>	<b>Y/N:</b>	Does the director of the designated State unit have adequate supervisory and administrative control over program staff of the unit?
<b>7.8</b>	<b>Y/N:</b>	Does the director of the designated State unit devote full-time to the work of the unit?
<b>7.9</b>	<b>Y/N:</b>	Does at least 90% of the staff of the designated State unit devote full time to the rehabilitation (VR, or vocational and other rehabilitation) work of the unit?
<b>7.10</b>	<b>Y/N:</b>	Does the director of the designated State VR unit report to the director of the designated State agency in a manner comparable to that of directors of other major organizational units?
<b>7.11</b>	<b>Y/N:</b>	Is the status of the director of the designated State VR unit comparable to that of directors of other major designated State units?
<b>7.12</b>	<b>Y/N:</b>	Are the delegations of authority to the director of the designated State VR unit comparable to those of directors of other major organizational units?

7.13            Y/N:            Does the designated State unit have functional comparability vis-a-vis the other major organizational units?

## **APPENDIX FOR DESIGNATED STATE UNIT SURVEY INSTRUMENT**

This provides background information and identifies references for additional information regarding the designated State unit survey instrument.

### **QUESTION #1**

The statutory language "**primarily concerned with**" acknowledges the flexibility provided in the Act with respect to the scope of programmatic responsibilities of the designated State unit. Within this context, the designated State unit can have responsibility for activities ***that fall outside*** of the parameters of "vocational rehabilitation, or vocational and other rehabilitation". Such responsibilities must be subordinate and secondary to the responsibility of the designated State unit for its VR program, or its VR and other rehabilitation programs. The designated State unit's responsibilities can also encompass activities that are "other rehabilitation" in addition to its responsibility for the VR program.

In summary, based on the statute the designated State unit can have responsibilities that extend beyond the VR program to encompass both "other rehabilitation" activities and also programs that are neither VR or "other rehabilitation".

### **REFERENCES**

101(a)(2)(B)(ii)(I) of the Act.

34 CFR 361.13(b)(1)(I) of the implementing regulations and the associated preamble discussions in both the December 15, 1995, Notice of Proposed Rulemaking and the February 11, 1997, Final Rule.

Policy Directive 96-02, dated November 7, 1995, and entitled "Special Education Programs as 'Other Rehabilitation' for Purposes of the Application of the Provisions of Sections 101(a)(1)(B)(I) and (2)(A)(I) of the Rehabilitation Act of 1973, as amended."



PQ 85, dated December 1, 1977, and entitled "Policy Clarification Issued July 22, 1977, Regarding 'All or Substantially All Full Time Staff.'"

PQ 260, dated May 20, 1981, and entitled, "Policy Interpretation on Definition of Vocational and Other Rehabilitation of Handicapped Individuals."

RSA Memorandum, dated May 11, 1967, and entitled "Organizational Level of State Rehabilitation Programs for the Blind."

RSA Memorandum, dated October 6, 1967, and entitled "Organizational Level of Sole State Vocational Rehabilitation Agencies and Operational Units."

Program Instruction 75-31, dated June 3, 1975, and entitled "RSA Policy Statement on Interpretation of State VR Organizational Requirements of the Rehabilitation Act, as amended."

Program Instruction 77-26, dated July 26, 1977, and entitled "RSA Policy Statement on Interpretation of State VR Organizational Requirements of the Rehabilitation Act, as amended." (Amends Program Instruction 75-31)

RSA Memorandum, dated October 20, 1977, and entitled "Nevada FY 1977 State Plan for Vocational Rehabilitation Services."

Memorandum of Regional Attorney to RSA Region I Director, dated February 21, 1975, and entitled "Role of Single Organizational Unit under State Vocational Rehabilitation Plan - Vermont Inquiry."

## **QUESTIONS #2 - #7**

These questions are designed to assess if the statutory provision that the designated State unit is ***"responsible for the vocational rehabilitation program of the designated State VR agency" is being satisfied.*** The statute does not describe the nature and scope of this responsibility or how it is to be carried out by the designated State unit.

The implementing regulations do, however, identify the minimum non-delegateable functions that must be carried out by designated State unit with respect to the statutory mandate for the unit "to be responsible for the vocational rehabilitation program of the designated State agency." These functions, which are identified in **Question #3**, relate to all decisions affecting eligibility, the nature and scope of services, and the provision of those services; determinations that individuals have achieved employment outcomes; policy formulation and implementation; and the allocation and expenditure of VR funds.

RSA policy has consistently viewed these functions as prime examples of what is meant by the statutory language that the designated State unit's "is responsible for the vocational rehabilitation program of the designated State agency" and not as the total extent of the responsibility of the designated State unit to administer the VR program of the State agency.

**Question #4** tests the extent and degree of the operational, day-to-day responsibility of the designated State unit in the administration of the VR program of the designated State agency when functions are centralized at the designated State agency level.

Legislative history, implementing regulations and RSA subregulatory policy have not addressed in a comprehensive and definitive manner the operational considerations with respect to what is meant by the notion of the designated State unit being "responsible for the vocational rehabilitation program of the designated State agency." The clearest statement in this regard is reflected in the regulatory provisions at 34 CFR 361.13(c) that identify the functions that must be carried out by designated State unit and which cannot be delegated to any other agency or individual.

RSA subregulatory policies developed in the 1970s within the context of the then current program regulations characterized this operational responsibility as the designated State unit "having an effective voice" and "strong input" with respect to the administration of the designated State agency's VR program when functions are centralized at the designated State agency level.

In assessing the nature and extent of this responsibility, the reviewer must make a judgment as to whether any responsibility exists and, if so, whether it affords the director of the designated State unit adequate input with respect to the administration of the centralized functions.

The reviewer's judgment in this regard should be based on the degree of responsibility and involvement of the designated State unit with respect to **all** of the functions listed in question #4, taken together as a whole, and not on some of the identified functions.

## **REFERENCES**

101(a)(2)(B)(ii)(I) of the Act.

34 CFR 361.13 of the implementing regulations and associated preamble discussions in both the December 15, 1995, Notice of Proposed Rulemaking and the February 11, 1997, Final Rule.

Program Instruction 75-31, dated June 3, 1975, and entitled "RSA Policy Statement on Interpretation of State VR Organizational Requirements of the Rehabilitation Act, as amended."

Program Instruction 77-26, dated July 26, 1977, and entitled "RSA Policy Statement on Interpretation of State VR Organizational Requirements of the Rehabilitation Act, as amended." (Amends Program Instruction 75-31)

PQ-47, dated March 23, 1977, and entitled "Responsibilities of the Designated Sole State Agency."

RSA Memorandum, dated May 19, 1972, and entitled "Proposed Placement at the Department Level of Certain Staff in the Minnesota State Vocational Rehabilitation Agency."

Memorandum from Office of General Counsel, dated December 13, 1973, and entitled "Arizona State Plan for Vocational Rehabilitation."

RSA Memorandum, dated July 14, 1978, and entitled "Montana Organizational Unit for VR Services."

### **QUESTION #8**

The director of the designated State unit must devote full-time to the work of the unit within the context of the scope of the unit's programmatic responsibilities. (See discussion above for Question #1). The director is not required to devote full-time to the VR component of the designated State unit's work. Title I funds can be used to support the work of the director of the designated State unit only to the extent of the director's activities spent on VR work.

### **REFERENCES**

101(a)(2)(B)(ii)(II) of the Act.

34 CFR 361.13(b)(1)(I) and (ii) of the implementing regulations.

45 CFR 401.8, dated December 5, 1974, and associated preamble discussion.

## **QUESTION #9**

As discussed above in Questions #1 and #8, the work of the designated State unit can encompass activities that extend beyond VR and other rehabilitation; however, the Act and the regulations prescribe that all or substantially all staff of the designated State unit must devote full-time to the VR and other rehabilitation work of the unit. Longstanding RSA subregulatory policy describes this portion of the designated State unit's staff that can be committed to activities that are not VR and other rehabilitation as being "no more than 5 to 10 percent of the total staff...". Building on this subregulatory policy, the current regulations set the maximum limit at 10 percent.

## **REFERENCES**

101(a)(2)(B)(ii)(III) of the Act.

34 CFR 361.13(b)(1)(iii) of the regulations and associated preamble discussions in both the December 15, 1995, Notice of Proposed Rulemaking and the February 11, 1997, Final Rule.

Program Instruction 75-31, dated June 3, 1975, and entitled "RSA Policy Statement on Interpretation of State VR Organizational Requirements of the Rehabilitation Act, as amended."

Program Instruction 77-26, dated July 26, 1977, and entitled "RSA Policy Statement on Interpretation of State VR Organizational Requirements of the Rehabilitation Act, as amended." (Amends Program Instruction 75-31)

PQ 85, dated December 1, 1977, and entitled "Policy Clarification Issued July 22, 1977, Regarding 'All or Substantially All Full Time Staff.'"

## **QUESTIONS #10 - #13**

These questions focus on the statutory provision that the designated State unit be located at an organizational level and have organizational status within the designated State VR agency comparable to that of other major organizational units of the State agency. To test for this comparability, the survey instrument examines factors such as the access of the directors of the various organizational units to the director of the designated State VR agency; the status (pay, grade, title) of the directors of the various major organizational units; the nature and scope of the authority and responsibilities invested in the directors of the various designated State organizational units to administer their programs; and the functional comparability between the designated VR unit and the other major organizational units of the designated State VR agency.

## **REFERENCES**

101(a)(2)(B)(ii)(IV) of the Act.

34 CFR 361.13(b)(iv) of the implementing regulations.

Program Instruction 75-31, dated June 3, 1975, and entitled "RSA Policy Statement on Interpretation of State VR Organizational Requirements of the Rehabilitation Act, as amended."

RSA Memorandum, dated November 9, 1976, and entitled "Vermont's Annual State Plan for FY 1976."

RSA Memorandum, dated September 22, 1978, and entitled "Proposed Reorganization of Arizona Department of Economic Security."

## 8. COMPOSITION AND FUNCTIONS OF THE STATE REHABILITATION COUNCIL

The 1998 amendments to the Rehabilitation Act of 1973, as amended (Act), strengthen the functions of the State Rehabilitation Council (SRC) by emphasizing a partnership between the designated State VR agency to ensure that the VR program is a "customer-oriented" and "customer-driven" program. Consequently, the SRC is no longer merely an advisory body. Despite these changes, the SRC still does not perform the same functions as the Statewide Independent Living Council, funded in Title VII of the Act.

A summary of the statutory changes affecting the SRC follow. This outline will focus only on the new requirements. Previously existing requirements will be mentioned only when needed to provide a context for the new requirements.

### A. NAME CHANGE

The Act now refers to the Council as the "State Rehabilitation Council." The word "Advisory" was deleted from the old name. (Section 105(a)(1))

### B. COUNCIL MEMBERSHIP

1. **The SRC membership has been expanded to include these three representatives:**
  - a. at least one representative of the directors of the American Indian VR Services Projects (when such a project is carried out in the State);
  - b. at least one representative of the State educational agency responsible for the public education of students with disabilities; and
  - c. at least one representative of the State workforce investment board. (Section 105(b)(1)(A))
2. **Minimum number:** This brings the minimum required number of Council members to 15. (Section 105(b)(1)(C))
3. **Nonvoting members:** The Act clarifies that the qualified VR counselor and the designated State unit (DSU) director are **non-voting** members of the Council. (Sections 105(b)(1)(A)(iv) and 105(b)(2))

4. **Appointing authority:** Only the Governor or the chief officer of an entity (such as one or more houses of the State legislature or an independent board) authorized under State law to administer the activities carried out under the Act may appoint members to the Council. The 1998 amendments to the Act on this provision (which granted appointing authority to only the Governor) were modified further by later technical amendments. The Act now reads similar to the 1992 version of the Act, with just some minor wording changes. (Section 105(b)(3))
5. **Considerations when making appointments:** When selecting members to be appointed to the Council, the appointing authority shall consider, to the greatest extent practicable, the extent to which minority populations are represented on the Council. (Section 105(b)(3))
6. **Term limit exception:** The Act continues to require that Council membership terms do not exceed three years. The Act also continues to require that members can serve no more than two terms (for a total of six years). However, the 1998 amendments to the Act creates an exception to the limit of two terms for Council members who represent the CAP and the American Indian VR Services Projects. The two-term limit does not apply to these members. (Section 105(b)(6)(B))
7. **Vacancies:** The appointing authority may delegate the authority to fill membership vacancies to the remaining members of the Council, provided the appointing authority made the original appointment. (Section 105(b)(7)(B))

## C. COUNCIL FUNCTIONS

1. Although the Council maintains its advisory functions, it also gains new functions that must be carried out **in partnership with** the designated State VR unit. These new functions will be outlined in #3 below.

**Senate Intent:** The Senate Report emphasized the notion of *partnership* between the Council and the designated State VR agency to ensure that the VR program is a "customer-oriented" and "customer-driven" program.

2. The Act requires that the Council carry out its functions **after consulting with the State workforce investment board**.  
(Section 105(c)'s lead-in clause)

**Congressional Intent:** None of the Committee

Reports indicates a Congressional intent of this language. RSA's initial interpretation is that: (a) the State workforce investment board does **not** have any governing authority over the SRC; (b) the burden is on the SRC to initiate the consultation (not on the workforce investment board) to ensure collaboration and to avoid duplication of efforts; and (c) one mechanism for the consultation between the SRC and the workforce investment board could be through the representation of the workforce investment board on the SRC.

3. **New Council Functions:** The SRC, in partnership with the designated State VR unit, shall jointly:
  - a. develop, agree to, and review State goals and priorities in accordance with section 101(a)(15)(C);
  - b. evaluate the effectiveness of the VR program and submit reports of progress to RSA in accordance with section 101(a)(15)(E); and
  - c. conduct a comprehensive, statewide assessment of the needs of individuals with disabilities living in the State every three years. (Sections 101(a)(15)(A) and 105(c))
4. The Act clarifies that the SRC shall assist in the preparation of the State plan and amendments to the plan, applications, reports, needs assessments and evaluations required by the Act. (Note: The former version of the Act granted the SRC this authority "at the discretion of the designated State agency.") (Section 105(c)(3))
5. The Act clarifies that the designated State unit **shall regularly consult with** the SRC regarding the development, implementation, and revision of State policies and procedures of general applicability pertaining to the provision of VR services. (Note: The former version of the Act required only that the DSU "seek and seriously consider on a regular and ongoing basis advice from the Council" regarding development and implementation of policies and procedures.) The amendment appears to strengthen the partnership role the SRC has with the DSU rather than serving as a mere "advisor" to the DSU. (Section 101(a)(21)(A)(ii)(II))
6. The Act requires the designated State VR agency to consult with the SRC when developing and implementing written policies and procedures that enable VR applicants and consumers to "exercise informed choice



throughout the vocational rehabilitation process." (Section 102(d))

## **Review Questions**

**8.1**            **Y/N:**            **Name Change:** Has the Council changed its name to reflect the 1998 amendments to the Act? The Council's name should no longer include the word "Advisory."

## **8.2    Council Membership**

**8.2.1**            **Y/N:**            Does the SRC have all of the required groups represented in its membership?

**8.2.2**            **Y/N:**            More specifically, does the SRC have a representative from each of the following:

**8.2.2.1**        **Y/N:**            workforce investment board;

**8.2.2.2**        **Y/N:**            American Indian VR Services project(s); and

**8.2.2.3**        **Y/N:**            State education agency responsible for the public education of students with disabilities?

**8.2.3**            **Y/N:**            Are all designated VR agency/unit personnel, who sit as members of the SRC, considered "non-voting" members?

**8.2.4**            **Y/N:**            Does the appointing authority consider the minority makeup of the SRC when appointing new members?

**8.2.5**            **Y/N:**            Is it clear that SRC members are appointed by only the Governor or other authorized appointing authority? In other words, Council members should not be making initial appointments.

**8.2.6**            **Y/N:**            Has the Council removed the term limits for the representatives from CAP and the American Indian VR Services projects?

**8.2.7**            **Y/N:**            Is the Council now filling vacancies as they occur (after the appointing authority has made the original appointment)?

## **8.3    Council Functions**

**8.3.1**            **Y/N:**            Does there appear to be more of a "partnership relationship" between the DSU and the SRC?

- 8.3.2**      **Y/N:**      Is the SRC consulting with the State workforce investment board in carrying out its functions?
- 8.3.3**      Are the DSU and SRC jointly:
- 8.3.3.1**      **Y/N:**      developing, agreeing to, and reviewing State goals and priorities in accordance with section 101(a)(15)(C)?
- 8.3.3.2**      **Y/N:**      evaluating the effectiveness of the VR program and submitting reports of progress to RSA in accordance with section 101(a)(15)(E)?
- 8.3.3.3**      **Y/N:**      conducting a comprehensive, statewide assessment of the needs of individuals with disabilities living in the State every three years?
- 8.3.4**      **Y/N:**      Does the SRC assist in the development of the State plan and its amendments, as well as other applications, reports, and evaluations required by the Act?
- 8.3.5**      **Y/N:**      Does the DSU consult with the SRC on a regular basis regarding the development and implementation of general VR policies and procedures, including those on informed choice?
- 8.3.6**      **Y/N:**      Does the SRC participate in the development or drafting of regulations governing the VR program?

#### **8.4    Barriers/TA Needed**

- 8.4.1**      Are there any specific areas that appear problematic for the SRC?
- \*\*
- 8.4.2**      If so, what are the barriers preventing compliance?
- \*\*
- 8.4.3**      What technical assistance is needed (e.g., from RSA), such as training or orientation, for the SRC and designated State VR agency to comply with the requirements?
- \*\*

- 8.4.4** Has the SRC received any of the following training:
- 8.4.4.1 Y/N:** training on the 1998 amendments to the Act especially in terms of the SRC's expanded functions?
- 8.4.4.2 Y/N:** "board" training?

## **9. INFORMATION AND REFERRAL SERVICES TO INDIVIDUALS NOT SERVED BY STATES ON AN ORDER OF SELECTION**

The 1998 amendments introduced provisions that linked the requirements related to information and referral services with the requirements for order of selection.

1. Agencies on an order of selection must ensure that an eligible individual who does not meet the open categories of the order of selection has access to services provided under the information and referral system.
2. Information and referral services include:
  - providing vocational rehabilitation information and guidance to assist individuals in achieving employment; and
  - appropriately referring individuals to other Federal and State programs, including other statewide workforce investment programs, that are best suited to meet the individual's specific employment needs.
3. When making a referral, the agency must provide the individual with:
  - a notice of the referral;
  - information about a specific point of contact; and
  - information and advice about the most suitable services for assisting the individual to prepare for, secure, retain, or regain employment.
4. Agencies must report annually on the number of individuals who did not meet the order of selection criteria and received information and referral services.

### **Review Questions**

Determine how the agency carries out the information and referral provisions, especially for those individuals who are not in open categories on the order of selection.

- |            |             |  |
|------------|-------------|--|
| <b>9.1</b> | <b>Y/N:</b> | Does the agency have policy/guidelines for carrying out the information and referral provisions? |
| <b>9.2</b> | <b>Y/N:</b> | Does the agency have specific forms?   |
| <b>9.3</b> | <b>Y/N:</b> | Are copies of the forms included in the record of services?                                      |

**9.4**

How does the agency assure that individuals receive the required information?

\*\*

**9.5**

How is the agency collecting the data required for reporting on the number of individuals who receive services under this provision?

\*\*

## **10. INFORMED CHOICE**

The 1998 amendments strengthened the requirements related to “informed choice” in the following ways:

1. References to informed choice were added to the definitions of “assessment for determining eligibility and vocational rehabilitation needs” and “supported employment,” to the description of “counseling and guidance,” and to sections 14(f)(2), Evaluation, and 625(b)(6)(G), Supported Employment.
2. The policy statement in section 100(a)(3)(C) was strengthened by clarifying that individuals have the opportunity to exercise informed choice throughout the VR process.
3. The state plan requirement of describing how individuals would be given choice and increased control in determining their goals and objectives was replaced by an assurance that individuals will be provided with information and support services to assist them in exercising informed choice throughout the VR process, consistent with the requirements in section 102(d) of the Act discussed below.
4. IPE requirements introduce the option for the individual to develop all or part of the IPE, independently or with others, using available technical assistance.
5. The IPE requirement for a statement by the individual about how the individual was informed about and involved in making choices was replaced with a requirement that the IPE be developed and implemented in a manner that affords an opportunity to exercise informed choice throughout the VR process.
6. The concept that the individual’s employment goal be “consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the eligible individual” (previously a regulatory requirement) has been incorporated in the content requirements of the IPE and the description of VR services for individuals.
7. “Informed choice” requirements previously scattered throughout the Rehabilitation Act were consolidated into a new stand-alone section (section 102(d)) that, in addition to restating 1992 requirements, also added requirements that State VR agencies:

- develop and implement written policies and procedures about informed choice in consultation with their SRC (previously a regulatory requirement);
- assist applicants and individuals in exercising informed choice during the assessment process; and
- develop and implement flexible procurement policies that facilitate service provision and provide individuals with meaningful choices among procurement methods.

In summary, the 1998 amendments strengthened the principles that the individual has the opportunity to exercise informed choice throughout the VR process, that the individual be provided with information and support services to assist them in exercising informed choice, and that the individual's employment goal be consistent with informed choice and other personal factors. The 1998 amendments introduced requirements that allow the individual greater participation in the development of the IPE and in the procurement of services.

## **Background**

Both the House and Senate bills emphasized “improved and enhanced consumer choice.” The House bill introduced new language regarding the individual's role in developing the individual plan for employment. The Senate language required assurances that VR participants or their representatives be provided information and support services to assist participants in exercising informed choice throughout the VR process. The Conference agreement adopted all of these views. The Conferees expressed the belief that “a consumer-driven program is most effective in getting people jobs.”

In reference to the IPE, the Conference agreement reflects the need “to provide greater choice and involvement of VR clients in developing their service plans.” The Conferees expect that these changes will fundamentally change the role of the client-counselor relationship, with the counselor serving more frequently as a facilitator of plan development.

## **Review Questions**

The following questions can be used by State VR agencies or Federal reviewers to determine the agency's progress in meeting the 1998 choice requirements and to identify technical assistance needs and resources.

**10.1**            **Y/N:**            Have methods for providing individuals with information and support

services for exercising informed choice throughout the VR process been implemented?

- 10.2**      **Y/N:**      Have methods for involving the individual in decisions about the assessment process been implemented?
- 10.3**      **Y/N:**      Have choice requirements related to the development of the IPE and IPE content, as addressed in those sections, been implemented?
- 10.4**      **Y/N:**      Have more flexible policies that make the procurement process more efficient at an agency level and provide procurement options for individuals been identified, developed or implemented?
- 10.5**      **Y/N:**      Have activities to support implementation of the choice requirements, such as revising written policies and procedures related to informed choice and providing training and guidance to counselors and consumers, been implemented?
- 10.6**      Describe any barriers or problems with implementing choice-related requirements?
- \*\*
- 10.7**      Describe any technical assistance needs or other Federal assistance strategies that would be helpful in implementing these requirements?
- \*\*
- 10.8**      Describe any notable practices that would be useful to share with others?
- \*\*

**Technical Assistance Resources:** The requirements to related to informed choice can be implemented using strategies that were developed by the RSA national choice demonstration projects, VR agencies, and other organizations interested in promoting greater control, participation, and self-determination for program participants. Listed below are a few possible resources for technical assistance.

1.      ***Promising Practices in the Choice Demonstrations Projects: An Operations Manual***



Prepared by InfoUse as a product of the evaluation of the National Choice Demonstration Projects. Describes sixteen promising practices in the areas of program entry, empowerment training, use of helpers, plan process and development, payment systems, and counselor performance review. Project forms, policies, and other documents related to each practice are included in the manual.

The manual is available at InfoUse's website:

<http://www.infouse.com/Choice>

InfoUse may also be contacted at: Choice@InfoUse.com (e-mail); 510-549-6520 (phone); or 510-549-6512 (fax).

## **2. *RSA Issuances***

RSA-PD-97-04:	Employment Goal for an Individual with a Disability
RSA-TAC-98-01:	Support Services for Individuals with Cognitive Disabilities and Others Who Need Assistance in Implementing Informed Choice
RSA-IM-98-18:	Informed Choice and Service Provider Issues
RSA-IM-98-16:	Self-Employment
RSA-IM-98-03:	Advice, Information, and Choice
RSA-IM-97-08:	RSA Demonstration Projects to Increase Client Choice

## **2. *State VR Agencies***

The following State VR agencies have begun to replicate strategies from the Choice Demonstration projects:

**Michigan** -- replicating aspects of the United Cerebral Palsy choice project in the Michigan Renaissance project.

**Vermont** -- implementing various strategies from the Vermont Choice project and exploring use of peer groups from The Development Team, Inc. Choice project.

**Washington** -- implementing various strategies from the Washington choice project.

The following State VR agencies are identified as collaborating agencies with RSA special demonstration projects having a focus on choice listed below:

**Connecticut** -- 1) JOBS & MORE; 2) Innovations in Choice: Enhancing Consumer Involvement in the VR Process

**Georgia** -- Community Intervention/Advocacy Model for People with Disabilities

**Illinois** -- Empowering Choices for Youths with Disabilities Graduating from High School

**Kansas/Missouri** -- Job Opportunities for a Lifetime

**Michigan** -- Detroit Empowerment and Employment Project

**Montana** -- Montana Rural Employment Initiative

**New Mexico** -- Specialized Training and Employment Placement Systems

**New York** -- Act Now

**Oregon** -- Consumer Planning Partnership Project

**Pennsylvania** -- Solutions for Change

**Washington** -- Pathways to Independence

## **11. RECORD OF SERVICES DOCUMENTATION REQUIREMENTS**

The record of services maintained by the designated State unit (DSU) documents all of the DSU's interactions with the applicant or eligible individual with a disability and also serves as the only documented proof of the DSU's compliance with its State plan assurances related to an individual's rights and responsibilities as related to the State Federal VR program.

The Amendments of 1998 reflect the concern of Congress, and numerous other persons interested in improving the Public VR program, that the requirements for the record of services be limited to the identification of the content areas that need to be addressed, and that the State VR agencies identify their own documentation standards against which RSA will then conduct its review. For a State that has a State Rehabilitation Council, RSA proposes that the development of the written standards need to be carried out in consultation with the Council.

The following guidance is designed to streamline the documentation requirements for the Public VR program. The subject of each broad content area is listed and then followed with the statutory requirements. As in previous modules of the Guide, a negative response indicates potential areas of concerns with regard to State VR agency compliance to the Federal requirements.

### **Review Questions**

#### **11.1 General**

**11.1.1 Y/N:** Does the DSU, in consultation with the State Rehabilitation Council, have written standards for documentation of a record of services?

**11.1.2 Y/N:** Does the DSU maintain for each applicant or eligible individual a record of services that includes, to the extent pertinent, the documentation indicated in the next section?

**11.1.3** Comments on above items

\*\*

#### **11.2 Content of the Record of Services**

**11.2.1 Y/N:** Does all documentation in the record of service include information supporting the exercise of informed choice by the applicant and eligible individual as appropriate, regarding the provision of assessment services, in the development of the individualized plan for employment, with respect to the selection of the specific employment outcome, the specific vocational rehabilitation (VR)

services needed to achieve the employment outcome, the entity to provide the services, the employment setting and the settings in which the services will be provided, and the methods to procure the services?

**11.2.2 Y/N:** In the event an individual is referred under the State unit's information and referral system to another program, including other components of the statewide workforce investment system, is information on the nature and scope of services provided by the designated State unit to the individual on the referral itself and included in the record of services?

**11.2.3 Y/N:** In the event an individual requests mediation or a review of a determination made by personnel of the designated State unit that affects the provision of vocational rehabilitation services, is information concerning any action or decision resulting from the request documented in the record of services?

**11.2.4 Y/N:** In the event an applicant or eligible individual requests that information in the record of services be amended due to being inaccurate or misleading and the information is not amended, is documentation related to the request for amendment included in the record of services?

**11.2.5 Y/N:** Comments on above items:

\*\*

### **11.3 Eligibility and Priority for Services**

Does the record of services of an eligible individual include the following information about the DSU's assessment for determining an individual's eligibility for the VR program:

**11.3.1 Y/N:** information to support the determination by qualified personnel that the individual has a physical or mental impairment?

**11.3.2 Y/N:** information to support the determination by a qualified VR counselor employed by the DSU that the individual's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant?

**11.3.3 Y/N:** information to support the determination by a qualified VR counselor

employed by the DSU that the applicant requires VR services to prepare for, secure, retain, or regain employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice?

**11.3.4 Y/N:** information supporting any determination that an individual has been determined to be an individual with a significant disability?

**11.3.5 Y/N:** when a DSU is on an order of selection, information supporting a determination that an individual is determined to be an individual with a most significant disability, how the individual meets the priority categories of selection?

**11.3.6 Y/N:** if an applicant, or eligible individual receiving VR services, has been determined to be ineligible for VR services, does the record of services contain information supporting that determination?

**11.3.7 Y/N:** prior to making an ineligibility determination that an individual with a significant disability is unable to benefit from services because of the severity of disability, does the record of services contain documentation that the DSU conducted an exploration of abilities, capabilities, and capacity to perform in realistic work situations through the use of trial work experiences, or, as appropriate, an extended evaluation, to determine whether the individual is an eligible individual?

Trial work experiences may include supported employment, on-the-job training and other experiences using realistic work settings.

Does the record of services include:

**11.3.8 Y/N:** information supporting the need for such exploration, or, as appropriate, extended evaluation, and information regarding the periodic assessments carried out during the trial work experiences, or, as appropriate, the extended evaluation?

**11.3.9 Y/N:** the written plan developed by the DSU to periodically assess the individual's abilities, capabilities, and capacity to perform in trial work experiences and situations which must be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual?

**11.3.10 Y/N:** if an extended evaluation is conducted, a written plan for

determining the individual's eligibility and for determining the nature and scope of services required for the individual to achieve an employment outcome? The designated State unit shall provide only those services that are necessary to make these determinations.

- 11.3.11 Y/N:** information about the appropriate supports provided by the DSU including assistive technology devices and services and personal assistance services, to accommodate the rehabilitation needs of the individual during the trial work experiences?
- 11.3.12 Y/N:** an assessment of the individual's progress as frequently as necessary, but at least once every 90 days, during the extended evaluation period?
- 11.3.13 Y/N:** information supporting the determination that there is clear and convincing evidence that the individual with a significant disability is incapable of benefiting from VR services in terms of an employment outcome because of the severity of that individual's disability?
- 11.3.14** Comments on the above items:

\*\*

#### **11.4 Individualized Plan for Employment (IPE)**

Is the IPE documented in the record of services, and does it include, as appropriate--

- 11.4.1 Y/N:** a description of the specific employment outcome that is chosen by the eligible individual, consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice and to the maximum extent appropriate in an integrated setting?
- 11.4.2 Y/N:** a description of the specific rehabilitation services that are needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices and assistive technology services, and personal assistance services, including training in the management of such services?
- 11.4.3 Y/N:** time lines for the achievement of the employment outcome and for the initiation of services?

- 11.4.4 Y/N:** a description of the entity or entities chosen by the eligible individual or, as appropriate, the individual's representative, that will provide the vocational rehabilitation services, and the methods used to procure such services?
- 11.4.5 Y/N:** a description of the criteria that will be used to evaluate progress toward achievement of the employment outcome?
- 11.4.6** the terms and conditions of the IPE, including, as appropriate, information describing:
- 11.4.6.1 Y/N:** the responsibilities of the designated State unit?
- 11.4.6.2 Y/N:** the responsibilities the individual will assume in relation to achieving the employment outcome; if applicable, the extent of the individual's participation in paying for the cost of services; and the responsibility of the individual with regard to applying for and securing comparable services and benefits as described?
- 11.4.6.3 Y/N:** the responsibilities of other entities as the result of arrangements made pursuant to the comparable services or benefits requirements?
- 11.4.7 Y/N:** In the event that the individualized plan for employment provides for services or an employment outcome in a non-integrated setting, does the record of services include a justification to support the non-integrated setting?
- 11.4.8 Y/N:** Does the record of services include statements concerning the expected need for post-employment services prior to the determination that the individual has achieved an employment outcome; a description of the terms and conditions for the provision of any post-employment services; and if appropriate, a statement of how post-employment services will be provided or arranged through other entities as the result of arrangements made pursuant to the comparable services or benefits requirements?
- 11.4.9 Y/N:** Does the record of services contain documentation that the IPE for a student with a disability who is receiving special education services is coordinated with the individualized education program (IEP) for that individual in terms of the goals and services identified in the IEP?

- 11.4.10** Do the IPEs for individuals with the most significant disabilities for whom an employment outcome in a supported employment setting has been determined to be appropriate:
- 11.4.10.1 Y/N:** specify the supported employment services to be provided by the designated State unit?
- 11.4.10.2 Y/N:** specify the expected extended services needed, which may include natural supports?
- 11.4.10.3 Y/N:** identify the source of extended services or, to the extent that it is not possible to identify the source of extended services at the time the IPE is developed, include a statement describing the basis for concluding that there is a reasonable expectation that such sources will become available?
- 11.4.10.4 Y/N:** provide for periodic monitoring to ensure that each individual with the most significant disabilities is making satisfactory progress toward meeting the weekly work requirement established in the IPE by the time of transition to extended services?
- 11.4.10.5 Y/N:** describe how services provided under an IPE will be coordinated with services provided under other individualized plans established under other Federal or State programs?
- 11.4.11** Comments on the above items:

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## **11.5 Closing the Record of Services**

- 11.5.1 Y/N:** If the record of services of an applicant or eligible individual is administratively closed for reasons other than related to eligibility requirements, does the record of services include information describing the reasons, and in the instance of non-cooperation on the part of the applicant, the efforts of the designated State unit to encourage the individual's participation?
- 11.5.2 Y/N:** When an individual is determined to have achieved an employment outcome, is information that demonstrates the services provided under the individual's individualized plan for employment contributed to the achievement of the employment outcome included in the record of services?
- Is information verifying that the following provisions have been satisfied also documented in the record of services:
- 11.5.3 Y/N:** the individual no longer requires vocational rehabilitation services to retain the employment outcome?
- 11.5.4 Y/N:** the employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice?
- 11.5.5 Y/N:** the employment outcome is in the most integrated setting possible, consistent with the individual's informed choice?
- 11.5.6 Y/N:** the individual has maintained the employment outcome for an appropriate period of time, but not less than 90 days, to assess the stability of the employment outcome and the individual's need for vocational rehabilitation services?
- 11.5.7 Y/N:** at the end of the appropriate period above, the individual and the qualified VR counselor employed by the DSU consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment?
- 11.5.8 Y/N:** the individual is informed through appropriate modes of communication of the availability of post-employment services?
- 11.5.9 Y/N:** in the event that an individual obtains an employment outcome in an extended employment setting in a community rehabilitation program

or any other employment under section 14(c) of the Fair Labor Standards Act, information related to the required annual reviews is included?

**11.5.10**      **Y/N:**      in the event that an individual obtains competitive employment, verification that the individual is compensated at or above the minimum wage and that the individual's wage and level of benefits are not less than that customarily paid by the employer for the same or similar work performed by non-disable individuals?

**11.5.11**      Comments on the above items:

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## TO OBTAIN FURTHER INFORMATION

RSA monitoring and technical assistance guidance is available in various formats and may be obtained by contacting the RSA staff listed below. Much of the guidance will also be available at the RSA Web Site in the near future. The address for the RSA Web Site is <http://www.ed.gov/offices/OSERS/RSA/rsa.html>. Contact Ms. Teresa Washington at (202) 205-9413 for further information and assistance with regard to the Web Site.

The RSA Regional Commissioners and Regional Office State Representatives are available to answer questions regarding any of the programs funded under the Rehabilitation Act, as amended. The contact information is as follows:

Mr. John J. Szufnarowski  
RSA Regional Commissioner  
Regions I and II (Boston and New York)  
Department of Education  
J.W. McCormack POCH Building, Room 232  
Boston, MA 02109  
VOICE: 1-617-223-4090  
FAX: 1-617-223-4573  
TDD: 1-617-223-4097  
EMAIL: [john\\_szufnarowski@ed.gov](mailto:john_szufnarowski@ed.gov)

Dr. Ralph N. Pacinelli  
RSA Regional Commissioner  
Regions III and IV (Philadelphia and Atlanta)  
Department of Education  
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100 Penn Square East  
Philadelphia, PA 19107  
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FAX: 1-215-656-6188  
TDD: 1-215-656-6186  
EMAIL: [ralph\\_pacinelli@ed.gov](mailto:ralph_pacinelli@ed.gov)

Dr. Douglas Burleigh  
RSA Regional Commissioner  
Regions V and VII  
Department of Education  
(Chicago and Kansas City)  
10220 N. Executive Hills Blvd.  
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Mr. Loerance Deaver  
RSA Regional Commissioner  
Regions VI and VIII  
(Dallas and Denver)  
Department of Education  
Harwood Center  
1999 Bryan Street, Suite 2740  
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FAX: 1-214-880-4931  
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Mr. Gilbert Williams  
RSA Regional Commissioner  
Regions IX and X (San Francisco and Seattle)  
Department of Education  
Federal Office Bldg., Room 215  
50 United Nations Plaza  
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FAX: 1-415-437-7848  
TDD: 1-415-437-7845  
EMAIL: [gilbert\\_williams@ed.gov](mailto:gilbert_williams@ed.gov)

RSA continues to fund the National Vocational Rehabilitation Technical Assistance Center (NVRTAC) to provide TA on matters not related to the development or interpretation of Federal vocational rehabilitation policy. NVRTAC arranges TA in the following areas:

01. Data processing systems development;
02. Operations Analysis;
03. Service Delivery Studies;
04. VR Staff Training (in the TA areas provided by NVRTAC);
05. Strategy Development;
06. Acquisition of Specialized Equipment;
07. Technologies Related to VR Functions;
08. Internal Planning;
09. Management Consultations;
10. Organizational Development; and
11. Enhancement of Accounting and Auditing Systems.

State VR agency directors interested in obtaining TA with regard to any of the above areas may wish to contact:

Mr. Gil Sanchez  
Program Manager  
National VR TA Center  
2920 South Glebe Road  
Arlington, Virginia 22206  
VOICE: (703) 299-1691  
FAX: (703) 299-4589  
TDD: (703) 299-1690  
EMAIL: thecenter@dtihq.com

For further information regarding RSA VR Program monitoring and technical assistance, contact:

Mr. Charles Sadler  
VR Program Specialist  
RSA Basic State Grants Branch  
330 C Street, SW, Room 3216  
Washington, DC 20202-2735  
VOICE: 202-205-9286  
FAX: 202-205-9340  
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